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VOLUME:

96

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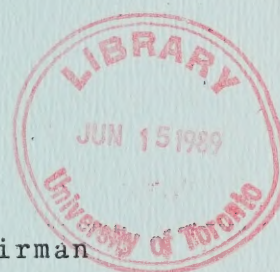
Monday, May 1st, 1989

BEFORE:

M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member



FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

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ENVIRONMENTAL ASSESSMENT BOARD

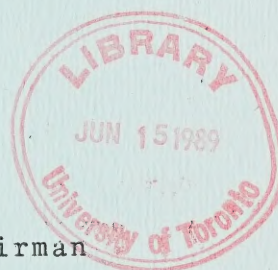
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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER of an Order-in-Council
(O.C. 2449/87) authorizing the
Environmental Assessment Board to
administer a funding program, in
connection with the environmental
assessment hearing with respect to the
Timber Management Class
Environmental Assessment, and to
distribute funds to qualified
participants.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St., Thunder
Bay, Ontario, on Monday, May 1st,
1989, commencing at 1:00 p.m.

VOLUME 96

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member



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A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	MINISTRY OF NATURAL
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MS. Y. HERSCHER)	
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MS. E. CRONK)	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY)	ASSOCIATION
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MS. B. LLOYD)	

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MR. P.D. McCUTCHEON	GEORGE NIXON

(iii)

APPEARANCES: (Cont'd)

MR. C. BRUNETTA

NORTHWESTERN ONTARIO
TOURISM ASSOCIATION

I N D E X O F P R O C E E D I N G S

<u>Witness:</u>	<u>Page No.</u>
<u>DAVID LOWELL EULER,</u> <u>PETER PHILLIP HYNARD,</u> <u>JOHN TRUMAN ALLIN,</u> <u>RICHARD BRUCE GREENWOOD,</u> <u>CAMERON D. CLARK,</u> <u>GORDON C. OLDFORD, Resumed</u>	16076
Cross-Examination by Mr. Hunter	16076

(v)

I N D E X O F E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
530	Document entitled: Timber Management Guidelines for the Protection of Heritage Resources.	16126
531	Document entitled: Geraldton Land Use Guidelines.	16184

1 ---Upon commencing at 1:00 p.m.

2 THE CHAIRMAN: Thank you. Be seated,
3 please.

4 Ladies and gentlemen, are there any
5 matters of a preliminary nature before we start?

6 (no response)

7 Very well, Mr. Hunter.

8 MR. HUNTER: Good afternoon, Mr.
9 Chairman, Mr. Martel, Ms. Koven.

10 I would like to thank you for your
11 gracious indulgence last week when I had been scheduled
12 to attend and, as I had indicated previously, I was
13 unable to be here that day.

14 I would also like to thank Ms. Seaborn
15 for, on very short notice, stepping in and conducting
16 her cross-examination and saving me the embarrassment
17 of having to waste your time on that day.

18 Mr. Chairman, I will have hopefully a
19 four or five-hour cross-examination and we will
20 hopefully be completed by five or six o'clock.

21 What is your wish? Do you wish to go to
22 six o'clock today, is that...

23 THE CHAIRMAN: We will try if we can, Mr.
24 Hunter, to finish with you today. If it turns out
25 towards the end of the day that it is going to be

1 longer than, say, six o'clock, then I think we will
2 adjourn until the next day.

3 MR. HUNTER: Okay. I will try to stay
4 with you. I don't think I will be my usual exuberant
5 self, but hopefully will provide you with good
6 information and an interesting time.

7 THE CHAIRMAN: I hope it's not too
8 interesting.

9 MR. HUNTER: No. The principal area of
10 the cross will be directed to Mr. Clark and to Dr.
11 Euler, and I am wondering if it would assist the Board
12 and perhaps Mr. Freidin, I will be referring to several
13 transcripts and, if you wish, I can enumerate them now
14 or do you wish me to simply proceed seriatim and then
15 we will all sort of stumble forward. Do you want me
16 to --

17 THE CHAIRMAN: It may help the other
18 parties. We don't have the transcripts.

19 MR. HUNTER: All right. Well, I will
20 read -- principally read from the transcript, if we
21 don't have them, so hopefully that will save some time.

22 MR. FREIDIN: Can you give me the numbers
23 now?

24 MR. HUNTER: 84, 82, 83, 86, 88, 87, 50,
25 52, 58 and possibly 49, 71, 67 and 7.

1 MR. FREIDIN: What were the last two, I
2 am sorry, David?

3 MR. HUNTER: 7 and 67. For the purposes
4 of exhibits, I will be referring to the interrogatories
5 that we had filed and as entered as evidence by the
6 Ministry, 486; I will be referring to Exhibit 433 a
7 paper by Messrs. Baker and Euler; Exhibit 5, the
8 Government Review; and to some of the District Land Use
9 Guidelines, but again, I will simply in that instance
10 be simply referring to the page numbers.

11 MR. FREIDIN: Mr. Chairman, I have only
12 got one copy of the transcripts and the witnesses are
13 obviously going to want to have a copy.

14 I would like the chance to get one, an
15 extra -- at least one extra copy to use for my purposes
16 and, as well, I know I don't have the Government Review
17 here. I've got it in the hotel, but I didn't bring my
18 copy.

19 THE CHAIRMAN: Will that take you very
20 long, Mr. Freidin?

21 MR. FREIDIN: It will take me about ten
22 minutes to get a copy of the other transcripts from
23 across the street.

24 THE CHAIRMAN: Is there anything you are
25 going to go into for ten minutes, Mr. Hunter, not

1 using --

2 MR. HUNTER: I will begin immediately
3 with Mr. Clark and referring to transcript 84.

4 THE CHAIRMAN: All right. Why don't we
5 just stand down for ten minutes and start off with all
6 the documentation here.

7 We will adjourn for ten minutes. Thank
8 you.

9 MR. HUNTER: Thank you.

10 ---Recess taken at 1:07 p.m.

11 ---On resuming at 1:25 p.m.

12 THE CHAIRMAN: Thank you. Be seated,
13 please.

14 MR. HUNTER: Thank you, Mr. Chairman.

15 DAVID LOWELL EULER,
16 PETER PHILLIP HYNARD,
17 JOHN TRUMAN ALLIN,
18 RICHARD BRUCE GREENWOOD,
CAMERON D. CLARK,
GORDON C. OLDFORD, Resumed

19 CROSS-EXAMINATION BY MR. HUNTER:

20 Q. Mr. Clark, if I could direct you to
21 Volume 84 of the transcript, principally to pages 14139
22 through to 14140.

23 Mr. Freidin led you in evidence with
24 respect to the Lac Seul ferry proposal and I believe
25 that this was an answer in response to our

1 interrogatory which the Ministry filed. Is that
2 correct, sir?

3 MR. CLARK: A. Yes, that's correct.

4 Q. Thank you. Is there a contract in
5 existence between McKenzie and the Lac Seul Band?

6 A. At this point, I don't know. The
7 last information I had was that the Band was
8 negotiating directly with McKenzie Forest Products and
9 I have not received any new information that would
10 indicate that a formal agreement has been signed, if
11 such is to be signed.

12 Q. So, in other words, there may not be
13 an agreement; is that correct?

14 A. That's correct.

15 Q. I see. You indicated that MNR was a
16 facilitator in this exercise. Did you -- did MNR
17 attend the negotiation sessions between the parties?

18 A. They were certainly at some of the
19 meetings, and I believe the minutes that I included --
20 in the material that I submitted with the
21 interrogatory, MNR was a participant at that meeting,
22 both regional and district staff.

23 Q. Did MNR act as a Chair in this
24 process? Are you familiar with the role that they
25 undertook?

1 A. I don't believe they acted as a
2 Chair, no.

3 Q. So, as I understand it then, there
4 may not be an agreement, to your knowledge?

5 A. When you talk about agreement, I am
6 assuming you are referring to an agreement that has to
7 do with -- well, there were a number of things that had
8 to be agreed on; one was the ferry proposal, and that
9 particular proposal has been approved in the timber
10 management plan.

11 There were other agreements that I
12 understood had to be negotiated between the Band and
13 McKenzie Products; one was the clearing of the road
14 right-of-way and I believe that that activity has
15 commenced. And the other was agreement to harvest
16 timber in the vicinity of that road, and that that is
17 the part that I think there may not be agreement on
18 yet, which would be a longer term commitment to harvest
19 wood in the vicinity of the road.

20 Q. Excuse me. Then that would be
21 harvesting timber on the reserve; is that correct?

22 A. No, that would be off the reserve, on
23 Crown...

24 Q. Okay.

25 A. Off the reserve on Crown land.

1 Q. But that's not an issue that the
2 native community would be involved with, harvesting
3 timber off the reserve. Am I wrong there?

4 A. Could you ask that question again?

5 Q. I believe you indicated that they
6 were presently in negotiations on the harvesting of
7 timber near the road -- or off the road as the phrase
8 you used. I asked you whether that was on the reserve,
9 you said, no. Obviously then it is off reserve on
10 Crown land?

11 A. That's right. And I think that what
12 we were talking about here is an employment
13 opportunity. In other words, members of the Lac Seul
14 Band would be harvesting wood for McKenzie Forest
15 Products.

16 Q. Okay, fine. Do you know if a
17 surrender has occurred with respect to the access road
18 or with the road on the reserve?

19 A. No.

20 Q. No reserve -- surrender has been
21 taken?

22 A. I don't know

23 Q. You don't know?

24 A. No.

25 Q. I see. If McKenzie Products cannot

1 obtain access across the reserve, will this proposal to
2 proceed with the ferry continue?

3 A. Frankly, I have no idea. I suppose
4 that if that particular -- the proposal that I spoke to
5 does not materialize, it will be necessary to revisit
6 the whole planning exercise, if you want, and the
7 possibility might exist that there might be other
8 options that would be considered.

9 I'm not particularly familiar with that
10 area and I can't give you any specific detail on what
11 those proposals might be or what the feasibility might
12 be.

13 Q. Can you advise the Board as to
14 whether or not the particular circumstances of the
15 proximity of the road across the reserve to the ferry
16 area is an unusual or a unique situation in terms of
17 reducing the distance for the transportation of the
18 logs?

19 A. I'm not just -- I'm sure I understand
20 what you are asking.

21 Q. Well, I am principally interested in
22 whether or not, if the access cannot be assured or
23 obtained to the ferry, is it economically feasible for
24 McKenzie to harvest lands, I believe it is north of the
25 reserve, and have to transport them I believe 140

1 kilometres -- my numbers may be wrong there, but that's
2 what I recall.

3 Does that essentially make harvesting in
4 that area uneconomic?

5 A. It would certainly make it more
6 costly. Whether it would make it uneconomical is a
7 question I can't answer.

8 Q. Thank you.

9 MR. HUNTER: Mr. Chairman, I just
10 obtained a copy of two pages of the transcript, pages
11 15385 and 15386 and perhaps it would be more
12 appropriate if Mr. Freidin responded.

13 He indicates at lines 20:

14 "We were advised by the Department of
15 Justice that they are currently
16 reviewing that proposal and that this
17 review must be undertaken because of the
18 responsibilities of the federal
19 government for the administration of the
20 Indian Act."

21 I guess my principal concern is whether
22 we are in the possession of information today as to
23 whether or not this agreement is proceeding?

24 MR. FREIDIN: I have no information
25 further -- in addition to what I indicated last week.

1 MR. HUNTER: Q. Mr. Clark, are you aware
2 of the reasons for the review by the federal
3 government?

4 MR. CLARK: A. No. I've been on the
5 stand for the last two months and I have not had an
6 opportunity to discuss it with Mr. Freidin.

7 Q. If the federal government were to
8 void this agreement under the Indian Act, am I
9 correct -- or can you answer this, Mr. Clark, that this
10 agreement agreement can go ahead -- could not go ahead
11 if the federal government were to void this agreement?

12 A. Well, it would obviously create some
13 real difficulty and it would obviously require that the
14 parties, as I say, revisit the original thinking and
15 work that went into the proposals that were evaluated
16 and it might be necessary to seek an alternative course
17 of action.

18 MR. HUNTER: Mr. Chairman, I would like
19 to know at the earliest possible time - and I suppose
20 the easiest thing for me to do would be to phone the
21 federal justice department at some point - but I am
22 interested in determining the status of this agreement.

23 Evidence has been led as to a proposal
24 and that this is a good thing and perhaps it is a good
25 thing. I'm not in the process of leading evidence,

1 but -- I don't want to do that, but I am quite
2 concerned as to what the federal review of this project
3 is. I think I know what it is just by knowing what the
4 Act is and what the problems would be, but --

5 THE CHAIRMAN: Well, apart from the
6 federal review, whether or not it's going ahead and
7 what results that will have, doesn't it boil down to a
8 legal question to the effect that if they void it
9 whether the proposal can go ahead in --

10 MR. HUNTER: Ultimately. I am just
11 concerned as to whether this arrangement is going ahead
12 because you have evidence before you that presumably --
13 I mean, the clear implication is that this is going
14 ahead and this is an example of how the Ministry can
15 establish programs or projects with the native
16 communities and I am very interested in knowing the
17 status of that.

18 That's the extent of my questions on
19 that. So perhaps...

20 MR. CLARK: One thing I would like to
21 stress about that proposal is that, notwithstanding any
22 problems that may arise subsequent or may have arisen
23 subsequent to the time that I led my evidence, I think
24 the major evidence I was placing in my evidence was the
25 cooperative context within which this proposal was

1 developed where the Lac Seul Band and McKenzie Forest
2 Products and the Ministry of Natural Resources worked
3 on a collaborative basis to arrive at a proposal and I
4 just want to emphasize that again.

5 THE CHAIRMAN: Do you have any knowledge,
6 Mr. Clark, why the federal government was not included
7 in any of these negotiations from the beginning?

8 MR. CLARK: I am not sure. I think if
9 we -- I suspect if I look at the minutes that there
10 were probably a representative from INAC at one of the
11 meetings. I would have to check though.

12 MR. HUNTER: Q. Do you happen to know,
13 Mr. Clark, whether or not there were federal financial
14 contributions to this agreement?

15 MR. CLARK: A. Not --

16 Q. To this proposal, excuse me.

17 A. Not that I'm aware of.

18 Q. Thank you. Could I draw your
19 attention to Exhibit 486 which is our interrogatory. I
20 believe that your answer -- the example of the Lac Seul
21 management or the Lac Seul proposal was in response to
22 Question 11.

23 Could you please advise -- I will wait
24 until you find it. Have you found it, sir?

25 A. Yes, I have.

1 Q. Could you please advise the Board, in
2 terms of your knowledge, whether or not there are any
3 examples that would fall within -- as an answer to that
4 question, in the geographical area of Nishnawbe-Aski
5 Nation which I presume, as you're aware, is the height
6 of land north and from James Bay over to the Manitoba
7 border?

8 A. Well, when I received your
9 interrogatory I certainly looked at the NAN geographic
10 area as the basis for finding a response and was unable
11 to identify a specific example and so I took one
12 further to the south.

13 So the shorter answer is no, I was not
14 able to identify a specific example.

15 Q. Thank you, sir. Did you have
16 anything further to add?

17 A. No.

18 Q. Thank you. If I might, Mr. Clark, if
19 you could turn to Volume 82 of the transcripts.

20 MR. HUNTER: Mr. Chairman, I don't wish
21 to unduly retread ground that Ms. Swenarchuk went over
22 with respect to the issue of background reports, but I
23 have a half a dozen questions in this regard, if I
24 might.

25 Q. And -- whoops I have the -- could you

1 bear with me one second. I apologize, Mr. Clark, it is
2 Volume 86 and I draw your attention to page --

3 MR. CLARK: A. Just a minute. I'm just
4 trying to get a copy now. I've got that now.

5 Q. And I draw your attention to the
6 bottom of 14401 and to the top of 14402 and my question
7 is simply this: With respect to the preparation --

8 MR. FREIDIN: Excuse me, that's in Volume
9 83, is it not?

10 MR. HUNTER: No, Volume 86, page 14401.
11 Okay, Mr. Freidin?

12 MR. FREIDIN: Yes, thank you.

13 MR. HUNTER: Q. My question, Mr. Clark,
14 is: With respect to the evidence that you have
15 produced - and I be go through it - Panel 10, Document
16 6, Exhibit 416B, which is a chart which you have
17 produced on the back and principally the chart that you
18 have produced in this -- in Volume II, could you
19 indicate to the Board whether there are any background
20 studies that were undertaken by yourself, by the
21 Ministry or by any other experts in relationship -- or
22 that would support the evidence that you have presented
23 to the Board?

24 MR. CLARK: A. No. I think as I
25 indicated in previous testimony, the principal means

1 for generating this particular information was, first
2 of all, contact with other MNR employees in the field
3 who had direct experience in dealing with native
4 people.

5 Also reference was made to the evidence
6 produced by my colleagues, principally those dealing
7 with fish and wildlife and, to some extent, those
8 dealing with logging methods and harvest systems and
9 reference generally was made to studies that have been
10 undertaken for other purposes that might provide
11 information. But no specific studies were undertaken
12 for that particular evidence.

13 Q. Were there any reference materials or
14 background materials that were used that would deal
15 specifically with impact on native communities in terms
16 of preparing the evidence?

17 A. Could you repeat that just once more?
18 I just want to make sure I understand what you're
19 asking for.

20 Q. Were there any studies or reports,
21 not prepared by MNR, general matters of -- reference
22 materials, academic studies, native policy position
23 papers that have been prepared which were used by the
24 Ministry in preparing the evidence for this panel?

25 A. Yes, there were. It would take me a

1 bit of time to prepare a list, but I made reference to
2 a number of publications.

3 Q. Where is that reference?

4 A. It is not referenced here, but it was
5 part of the general background reading that I did in
6 preparing for these hearings.

7 Q. So it is general background material
8 that you have read; is that correct?

9 A. That's correct.

10 Q. Okay. To your knowledge were any
11 studies prepared in the preparation of the Class EA,
12 not just in relationship to your evidence under Panel
13 10, with respect to socio-economic impacts on native
14 people?

15 A. I'm not aware of any having been
16 prepared specifically for that purpose.

17 Q. So the basis of the evidence that you
18 have presented is based on information obtained from
19 MNR officials who, as you have said, have had contact
20 with native people and from personnel who have prepared
21 other documents and other materials; is that correct?

22 A. That's correct. Generally correct.
23 I think that -- I don't want to sell myself short on
24 this because I don't want to leave the impression that
25 a lot of thought and work -- I don't want to leave the

1 impression that a lot of thought and work didn't go
2 into the preparation of this evidence.

3 We discussed the evidence with the
4 Ministry responsible for native affairs, we discussed
5 the evidence, for example, that related to heritage
6 resources with the Ministry of Culture and
7 Communications, we went to considerable length to
8 generate the information that we had put together both
9 on this table and other tables that relate to native
10 people.

11 And I want to stress that very carefully
12 because I think that you're looking far too narrowly if
13 you only address yourself to Table 32 in this
14 particular evidence package. One of the primary
15 messages that I have given in my evidence and is
16 included on that table is that native people have been
17 identified as local and traditional users, but we've
18 also gone to great lengths to stress that they can be
19 one or any of the other stakeholders groups.

20 So that they can be trappers, hunters,
21 anglers, commercial fishermen, forest industry
22 personnel and, to the extent that we generated
23 information on those stakeholder groups, we've also in
24 that sense included -- that also includes revenues to
25 native people.

1 Q. Well, perhaps I can follow up on that
2 then. Where are there background studies or are there
3 background studies that discuss or analyze the position
4 of native people as others, stakeholders, or are we
5 presuming that the information generated by the
6 stakeholders; i.e., hunters, does simply apply to the
7 native community?

8 Is there specific information or analysis
9 about native people as hunters as distinct from
10 information about hunters which would include native
11 people?

12 A. No, there is not specific studies
13 that were done for this purpose.

14 Q. With respect to native people as
15 stakeholders; i.e., as hunters?

16 A. Not specifically. In other words, if
17 the implication is that their concerns are different
18 and, therefore, should be highlighted or could have
19 been highlighted in studies, the answer is no, we did
20 not do studies that spoke, for example, specifically to
21 native people as hunters.

22 We addressed ourselves to the more
23 general concerns of hunters which, in most cases, we
24 felt were very similar and for that reason saw no
25 particular need to isolate or look specifically at

1 native people. And I guess partly -- part of the
2 reason for that was simply because the planning process
3 that we've adopted allows anyone, whether they be
4 native or non-native, to be a trapper and to have their
5 concerns addressed in that process.

6 Q. Well, I think that we've revisited
7 that theme many, many times. I just want to clarify it
8 today. In terms of -- sorry.

9 A. Mr. Hunter, one thing I am a little
10 concerned about. I don't want to leave you with the
11 impression that while - and I guess I feel very
12 strongly about this - while we didn't undertake any
13 specific studies, I don't want to leave you with the
14 impression that we didn't look at any studies that
15 dealt -- specific studies or reports that dealt
16 specifically with the values and concerns of native
17 people as it relates to timber management and, in this
18 case, more particularly harvesting.

19 We did and I am certainly prepared to
20 provide you with information on what some of those
21 studies were. I can't just rhyme them right off my
22 tongue at this point in time.

23 But I think the important thing is we did
24 reference them, they can be made available, but we did
25 not undertake specific studies.

1 Q. You indicated that you reviewed your
2 evidence with ONAD. When did that occur?

3 A. Well, we reviewed not specifically
4 this evidence, but we certainly reviewed the approach
5 that would be taken to evidence with ONAD and I think
6 you are aware of some of the correspondence that
7 occurred on that matter.

8 Q. So are we referring now to Exhibit 5,
9 the Government Review; is that the discussion that we
10 are talking about?

11 A. Well, that would certainly be part of
12 it, yes.

13 MR. HUNTER: Mr. Chairman, I am referring
14 now to a memorandum, I believe we've discussed this
15 before, from Mr. Douglas to Mr. Krasnick, and it's in
16 Exhibit 5 at page 242.

17 Q. Let me draw your attention, Mr.
18 Clark, to the first full paragraph -- second full
19 paragraph on 243 to the last sentence:

20 "While it is our intention to make
21 reference to these matters in evidence at
22 the hearing, we agree that some specific
23 information may be helpful at this time."

24 Did you engage in any personal
25 discussions with officials of the Ministry -- with the

1 Office of Native Affairs Directorate?

2 MR. CLARK: A. Yes, I did.

3 Q. You did. And when did you do that,
4 sir?

5 A. I have no idea. It was probably at
6 least a year ago.

7 Q. I see. And is it your view that the
8 evidence that you have given to the Board in terms of
9 your oral evidence and with respect to the evidence
10 contained in Volume II, does this meet the indications
11 or the suggestion by Mr. Douglas that evidence will be
12 led?

13 In other words, the evidence that you
14 have presented in Panel 10, is this the evidence that
15 the Ministry is going to be presenting in terms of
16 impacts on the native community?

17 A. That is our evidence.

18 Q. This is your evidence. So what we
19 see is what we get?

20 A. That's correct.

21 Q. Okay. So, therefore, the indication
22 to Mr. Douglas that evidence will be led -- sorry, let
23 me do it again. The indication from Mr. Douglas to Mr.
24 Krasnick that evidence will be led has been led with
25 respect to Panel 10?

1 A. That's correct.

2 Q. Thank you.

3 THE CHAIRMAN: You mean with respect to
4 the activity of harvesting?

5 MR. HUNTER: Harvesting.

6 MR. CLARK: Yes.

7 MR. HUNTER: Q. Is there additional
8 information with respect to impacts on native
9 communities that will be led in other panels?

10 A. Well, the format will be essentially
11 the same, as you know, as the format that was included
12 here in lead evidence. There may be an opportunity to
13 elaborate on some of the information in those
14 documents.

15 Q. And if you would turn to page 244 and
16 you have the identification of four effects?

17 A. Correct.

18 Q. Are you of the view that the effects
19 which are identified there have been dealt with in
20 terms of your evidence that has been provided?

21 A. Well, it may be helpful if I just run
22 through them. The first one is the potential effects
23 of harvest activities on tourist establishments; that
24 is, on aesthetics. It would also negatively affect
25 native people operated or employed in these

1 establishments.

2 In my lead evidence I talked at length
3 about the concerns of the tourism industry, the tourism
4 establishments and I also introduced evidence
5 concerning the development and use of the Tourism
6 Guidelines. So my answer would be, yes, we have spoken
7 to that particular issue.

8 The second one is the economic benefits
9 that accrue to those employed in harvest activities
10 which could be realized by native people in some native
11 communities who engage in logging. We have talked
12 generally about that in the evidence on Table 32 and
13 Mr. Kendrick spoke to that to some extent in his
14 evidence and certainly I'm prepared to answer questions
15 that relate to that -- those concerns here.

16 The third, one potential negative effects
17 on traditional use, in particular, hunting and trapping
18 may result from alteration of wildlife habitat. I
19 think much of the evidence that Dr. Euler and Dr. Allin
20 presented dealing with fish and wildlife relates
21 directly to the concerns of native people and, in that
22 sense, we have spoken to those particular --

23 Q. Excuse me. Native people as native
24 people, or native people as other stakeholders?

25 A. Native people as hunters, fishermen,

1 trappers. And finally there may be some also negative
2 effects where harvest takes place in specific areas
3 which are used for seasonal camps, for other particular
4 activities of native people. And I think I have spoken
5 to that in a number of cases, but on Table 32 I do talk
6 about sites of religious and cultural significance and
7 I did lead evidence on the Pow-Wow site adjacent to
8 Keys Lake as an example of an instance where a
9 particular value had been identified and action had
10 been taken through the planning process.

11 Q. Okay. Perhaps we can go back to
12 Volume 84 very briefly at page 14158.

13 And in the first full paragraph - I
14 believe I'm correct, it's your evidence:

15 "I think that in practical terms the
16 activities of access, harvest, renewal
17 and maintenance have to be viewed
18 collectively when you are making
19 decisions."

20 What I am curious about is whether or not
21 the schema that you have identified -- the information
22 base and the schema that you have identified for the
23 purposes of mitigation impacts on native communities,
24 does that apply equally to harvesting access and to the
25 other activities?

1 You're saying for all practical purposes,
2 all of these activities should be viewed collectively
3 and, therefore, my question is: In practical terms, if
4 the activities which you are undertaking should be
5 viewed collectively, then it seems to me that the steps
6 one takes in terms of mitigation should also be viewed
7 collectively. Would you share that view?

8 A. Yes, I would very definitely.

9 Q. And, therefore, the evidence which
10 you have led in relationship to impacts --
11 socio-economic impacts on native communities not only
12 applies with respect to harvesting but would apply to
13 other activities as well; is that correct?

14 A. Well, the effects of other activities
15 will be somewhat different. I think the point I'm
16 making here is that when you get involved in decisions
17 where a value -- a particular land use or value has
18 been identified through the planning exercise and you
19 go through the planning process, that it's probably not
20 appropriate to think only about one activity; that is,
21 harvest, you have to look at the sum total of all the
22 activities and when you design a particular
23 prescription or a set of mitigative activities, that
24 you think of all of these effects not simply one.

25 Q. And why would we do that?

1 A. Because, as I say, they're
2 inter-related, the activities.

3 Q. Are they cumulative as well?

4 A. They can be. I think in my evidence
5 I have tended to describe them as being similar and
6 sometimes additive.

7 Q. Does additive mean cumulative--

8 A. Some of the time.

9 Q. --for the purposes of your evidence?

10 A. I would say so, yes.

11 Q. Is it an arithmetic effect or would
12 it be a geometric effect in terms of the impacts?

13 A. I have no idea. If you give me an
14 example I will try and explain what I mean.

15 Q. Well, let's assume that we take an
16 isolated community that has no road access in which a
17 substantial number of the people reside and obtain game
18 and fish game, not only subsistence but a substantial
19 part of their diet, would the effects on them be the
20 same if cutting were to occur; that is, harvesting
21 activities were to occur let's say within a five
22 kilometre area of the reserve or of the community and
23 would those effects be the same, greater or less if
24 suddenly there was to be access roads cut into the
25 area?

1 A. Well, they could be very different.

2 Q. They could be very different?

3 A. Yes.

4 Q. So, therefore, the effects of
5 harvesting are different from the effects of access
6 roads?

7 A. Well, they certainly can be, yes. We
8 are talking about hypotheticals now so I am having some
9 difficulty in understanding precisely what you're
10 getting at here.

11 Q. Well, I am trying to understand the
12 evidence, Mr. Clark, where you have said for all
13 practical purposes we have to look at these things in
14 terms of their collective impact.

15 A. Well --

16 Q. And you said that they are additive
17 and I am trying to understand exactly what that means.

18 A. Well, okay, here's a very simple
19 example. I think in my evidence actually when I was
20 dealing with tourism I talked about the inter-related
21 nature of effects and the variable nature of effects
22 and I talked about the fact that many times when you
23 are dealing with the issue of harvest you can't ignore
24 the fact that there is normally going to be some form
25 of access associated with it and, because of that, you

1 can't simply dwell on the issue of the effects of
2 harvest, per se.

3 In many instances, not only do you have
4 to look at the effects of harvest which may be things
5 like the potential for - and I stress the word
6 potential - for erosion, sedimentation, nutrient
7 transfer and a host of things that have been spoken
8 about here, or positive benefits like supplying wood,
9 jobs and so on.

10 At the same time, you can't look at that
11 without also looking at the implications of, for
12 example, building a road to access that particular
13 area. So that if you are talking about a native
14 community, a class -- I think a very real kind of
15 example would be a situation where you do have the
16 potential to harvest wood in the vicinity of that
17 community and it may mean that you can provide jobs or
18 employment opportunities for people in that community.
19 At the same time, although as far as I know, most of
20 the reserves in the area of the undertaking are road
21 accessed already, if there are -- in cases where there
22 are communities that are not road accessible, you would
23 have to also consider the potential effect that road
24 access might have on that community and it may be
25 viewed as a positive benefits or it may be viewed as

1 negative benefit.

2 So that the effects of harvest would -
3 that's really all I was saying - would have to be
4 weighed together with the effects of the access that
5 would be required to get at that wood.

6 Q. All right.

7 A. I think all I was stressing here was
8 that for very practical reasons, the practical reasons
9 of sort of partitioning our evidence so that it was
10 manageable, we focus on the activities of access,
11 harvest, renewal and maintenance, but when forest
12 managers -- unit foresters and so on and planning teams
13 are making the decisions, they have to take a wider
14 view than that.

15 MR. HUNTER: Excuse me.

16 MR. CLARK: The one point I made earlier
17 was that these activities and the effects of these
18 activities are sometimes similar and additive or, as
19 you say, cumulative. There are cases of course where
20 that is not the case and I don't want to leave you with
21 the impression that they are always cumulative.

22 An example is in instances where you
23 might have concerns about erosion and sedimentation.
24 Renewal of the site will in effect act as a mitigating
25 measure and in instances where there was the potential

1 for erosion and sedimentation, presumably by
2 regenerating that site you would be ameliorating that
3 kind of a condition.

4 Q. Correct me if I'm wrong but - I don't
5 want to get into McNamee's evidence - but given what
6 you have presented on Table 32 which is in the Volume
7 II--

8 MR. CLARK: A. Yes.

9 Q. --to what degree does the schema
10 which you have identified there - and I am now turning
11 principally to page 1031, 1031 and 1032 - does the
12 ability to take into consideration what I have referred
13 to as cumulative impacts identified there? To what
14 degree does the mechanism which is identified on the
15 left-hand, my right-hand side of the page, take that
16 into consideration?

17 A. Well, I am not exactly sure I
18 understand you, but perhaps I can try and explain one
19 of the -- some of the information here in the context
20 of what I think you are getting at.

21 Sites of cultural and religious
22 significance. I have said that timber harvest
23 operations can disturb or destroy sites of cultural or
24 religious significance to native people, for example,
25 pictograph sites, traditional camping areas and so on.

1 THE CHAIRMAN: Just a minute, Mr Clark.

2 You're going to have to slow down a little bit.

3 MR. CLARK: Oh, I'm sorry.

4 THE CHAIRMAN: And speak up so the
5 reporter can get you.

6 MR. CLARK: Just the last part?

7 THE REPORTER: Please.

8 MR CLARK: For example, pictograph sites,
9 traditional camping areas, burial grounds or other
10 archaeological sites.

11 Now, when I thought about this and when I
12 was putting together the evidence, there is a wide
13 range of possible effects there and that is why it's
14 difficult to provide them all, but to the extent that
15 harvesting -- well, let me -- let's choose a couple of
16 examples.

17 For example, if you had a pictograph site
18 on a particular lake that was of significance to native
19 people, and as I suspect most of them are, harvesting
20 activities would probably not impinge directly on
21 that -- the cliff face, for example, that the
22 pictograph site was located on. But to the extent that
23 the area surrounding that particular site had
24 particular meaning or was very much a part of that site
25 in a sort of physical and spiritual way to native

1 people, harvest activities could be viewed as very
2 disruptive, if not totally unacceptable, and so the
3 normal way that I think we would deal with this would
4 be as we have indicated, to put a reserve in place or
5 at least modify operations to take those concerns into
6 effect.

7 Now, when you move into the area of
8 renewal where you may be doing site preparation work to
9 prepare the site for renewal, it's not really an
10 additive or a cumulative effect because you have
11 already made the decision and taken the action at the
12 time of harvest to deal with it. So that in that
13 particular instance you are probably mindful of all the
14 activity that may occur in the vicinity of that site at
15 the time you are writing the prescription, but the
16 thing that really triggered it was the desire to
17 harvest wood in the vicinity of that particular
18 resource or resource value.

19 MR. HUNTER: Q. Well, let me come back
20 to cultural issues perhaps in the next set of
21 questions, Mr. Clark, but I will try to rephrase the
22 question in terms of effects on traditional activities:
23 Harvesting, fishing--

24 MR. CLARK: A. Yes.

25 Q. --hunting, trapping. Where in terms

1 of dealing with cumulative effects is there a procedure
2 or procedures set out in Table 32 in terms of the
3 actual material that's there for you?

4 A. There is not a procedure set out on
5 Table 32. Table 32 addresses itself specifically to
6 the activities of harvest.

7 Q. So, therefore, in order to understand
8 and deal with cumulative effects one has to then take
9 what is on 32 and then one has to presumably take the
10 evidence which is going to be led in relationship to
11 access; is that correct?

12 A. Or any of the other activities, that
13 is correct.

14 Q. Okay. Perhaps we could turn to the
15 Table 32 now.

16 MR. HUNTER: Mr. Chairman, it is in
17 Volume II. I'm going to be referring for a good part
18 of the cross-examination to Table 32, so it's a
19 document that we are going to be coming back to.

20 Q. And if I could draw your attention
21 to --

22 MR. HUNTER: It's Exhibit 416A, it's
23 Document 6 and page 1031. Sorry, I misspoke myself,
24 416B.

25 Q. Just to help me clarify some points.

1 If I could take you to 1031 and to the second bullet
2 and you have cross-referenced Table 20. If you could
3 turn to Table 20, Mr. Clark.

4 MR. FREIDIN: What page is it?

5 MR. HUNTER: On page 1004.

6 Q. I don't think that's what you mean,
7 or I'm presuming --

8 MR. CLARK: A. No, I think that is --
9 that referred -- I'm sorry, there is a typographical
10 error there. That refers to Table 21.

11 Q. Okay.

12 A. It deals with cottagers and I guess
13 that is what confused me when I put it together. My
14 apologies.

15 Q. Now, let me -- just in order to
16 understand the relationship between the tables, am I
17 correct in assuming that what one does here is that in
18 relationship to archaeological sites as distinct from
19 sites of cultural and religious significance that one
20 picks up Table 21 and inserts it into Table 32?

21 In other words, is Table 21 the
22 mitigative measures that would apply in relationship to
23 archaeological sites as they would relate to the native
24 community?

25 A. That is generally correct. I called

1 them cultural and heritage values and so what I was
2 simply saying was that sites of religious or cultural
3 significance would be dealt with in the way that has
4 been identified in Table 21 subject to any further
5 direction that we may get as a result of the production
6 of the Heritage Guidelines that are being developed
7 right now.

8 Q. Then you will have to help me here
9 because I'm trying to understand. You've identified on
10 Table 32 sites of cultural and religious significance
11 as the concern; you have identified the potential
12 effect and the measures to enhance, prevent or minimize
13 or correct effects and you have identified one, two,
14 three, four, five, six mitigative measures other than
15 those identified for archaeological sites.

16 Are those the measures which are applied
17 to sites of cultural and religious significance?

18 A. Well, you may be having trouble with
19 the table. We say that the harvest operations can
20 disturb or destroy the sites and then, in measures to
21 enhance or prevent, there are really only two bullets
22 that apply. One says that will protect specifically
23 identified sites of cultural and religious significance
24 with reserve or modified operations. In other words,
25 if we are made aware of them through the planning

1 process we can take steps to protect them.

2 And then it says for archaeological sites
3 see, Table 20 which should read 21. And as many of
4 these sites would presumably be considered
5 archaeological sites in the sense that they might be
6 traditional camping areas pictograph sites and so on,
7 the same direction that applied to archaeological sites
8 was referenced for these sites as well.

9 Q. Well --

10 MR. FREIDIN: I think part of the problem
11 here, Mr. Chairman, is an identification problem.
12 There are four tables here which deal with naturalists,
13 Tables 21 through 23. 23 we haven't even turned to
14 yet, is disturbances of archaeological sites.

15 I'm not too sure if that is any
16 assistance at all.

17 MR. CLARK: Well, you are looking at --
18 we are on page 1005 -- or 1005 which is cottagers,
19 stakeholder is cottagers, it's Table 21.

20 But I guess the point I am making here,
21 maybe I can explain in practical terms. If there is a
22 burial ground we can call it a site of cultural and
23 religious significance to native people. It is also I
24 think by definition an archaeological site and what we
25 are saying here - and, as I said, this is subject to

1 whatever direction we receive as a result of the
2 production of the Heritage Guidelines - is that it
3 would be normal practice where this value was
4 identified for us to examine known sites to determine
5 their extent and protect with reserves.

6 And then we go on to say:

7 "If the archaeological site is
8 significant, delay harvest to permit
9 excavation and removal of artifacts."

10 If that is the objective; it may not be at all, it may
11 simply be to protect it site because it's significant.

12 "In certain situations harvesting may be
13 restricted to winter months to avoid soil
14 and site disturbance."

15 So really the way -- in some instances,
16 the way you treat an archaeological site is because you
17 are dealing with the same entity in many instances.

18 MR. HUNTER: Q. Well, I'm afraid -- let
19 me go back because I'm trying to break this down.

20 First of all, sites of cultural and
21 religious significance, let's parse this. Are they
22 different from archaeological sites and who determines
23 what is cultural and religious and what is
24 archaeological?

25 MR. CLARK: A. Well, if we are dealing

1 with native people--

2 Q. Yeah.

3 A. --if they identify a particular value
4 or land use that is of concern to them, that in effect
5 goes on a values map and then we go through a planning
6 process where we try and identify what the issue or
7 concern is relative to that particular value and what
8 an appropriate action might be in order to protect that
9 value or use.

10 Q. Who determines if it's significant?
11 Who makes the decision?

12 A. Well, I think in most instances
13 native people themselves have to identify that a site
14 is significant and the example I used was the Pow-Wow
15 site at Keys Lake and that was an instance where the
16 Indian Band in question wrote directly to the district
17 manager and said: There is a site on a lake which is
18 of concern to us.

19 It was drawn to our attention and, in
20 this particular case because the company was putting
21 the timber management plan together, that information
22 was drawn to the attention of the company. So I think
23 to a large extent we have to rely on the native
24 community to tell us what their concerns are and what
25 is of value to them. I don't think we are making any

1 assumptions about what is a value.

2 Q. So let's -- so if the native
3 community identifies a site of cultural and religious
4 significance, we then go from there over to the top of
5 the measures to enhance:

6 "Protect specifically identified sites of
7 cultural and religious significance with
8 reserves."

9 So that means that it is possible that no
10 cutting would occur in an area where there's a site of
11 cultural and religious significance?

12 A. That's correct, if that was the
13 appropriate measure.

14 Q. And who would make that decision as
15 to whether it was appropriate or not?

16 A. Well, I think it would be made on --
17 it would be a collaborative decision made between
18 whatever party identified the site and the planning
19 team.

20 And this is one case where -- one case in
21 many where we have to rely on the knowledge and the
22 expertise, if you want, of the particular stakeholder
23 to assist us in identifying what the value is and how
24 best to protect it.

25 Q. Or there could be modified harvest

1 operations?

2 A. That's correct.

3 Q. Those are the two options.

4 A. And then we jump down to Table 21,
5 which --

6 Q. Okay. Let's take it one step at a
7 time. Do the measures which have been identified on
8 Table 21, do they apply to cultural and religious
9 sites?

10 A. I believe they can apply to them in
11 many instances.

12 Q. Okay.

13 A. Which is why I included them.

14 Q. Now, were you the author of these
15 particular measures?

16 A. Yes.

17 Q. Do these represent MNR policy at this
18 particular point in time in terms of dealing with these
19 matters?

20 A. I would say they represent MNR
21 practice in terms of dealing with these matters.

22 Q. Okay. Then help me as we go through
23 Table 21, which I have now simply assumed is sitting on
24 Table 32.

25 The first question: How have we

1 determined that a particular site is an archaeological
2 site? Who has made that determination? Is it an
3 archaeologist that does that?

4 A. It may ultimately be an
5 archaeologist, but I think in a lot of cases it is
6 almost self-evident. If you are talking about a burial
7 ground, I guess you could call it a site of --
8 obviously it's a site of religious and cultural
9 significance and it may well be.

10 Q. And it is also an archaeological
11 site; is that correct?

12 A. Yes, that's correct.

13 Q. And if it is an archaeological site,
14 therefore, you can protect it as well with reserves?

15 A. That's correct.

16 Q. Okay. Let's go down to the next
17 bullet.

18 A. I should point out that when we use
19 the term or when I use the term archaeological site I
20 used it in a fairly broad way, and I think that if you
21 look at the system that archaeologists in the province
22 use for identifying sites - I think it is called the
23 Borden system - it isn't simply sites that are below
24 ground, so to speak.

25 The system of sites that are identified

1 in their system include all manner of sites including
2 traditional camping areas, pictograph sites, sites of
3 religious significance which may not have any sort of
4 man-made development on them. So I use that term in a
5 fairly broad context.

6 Q. The term archaeological?

7 A. That's right, archaeological site.

8 Q. And that is what you are conveying
9 here to the Board, that this is not a term that is
10 subscribed to any piece of legislation or defined by
11 any particularly rigorous system, scientific system?

12 A. It may well be somewhere in some
13 particular Act, but in the context of my evidence and
14 my experience, as one who once coordinated the
15 archaeological program for the northeastern region,
16 when we spoke about archaeological sites we talked
17 about a wide range of sites, man-made and natural,
18 above and below ground.

19 Q. Okay. Let's go down to the second
20 bullet on Table 21, and I was intrigued by the use of
21 the language:

22 "If the archaeological site is
23 significant, delay harvest to permit
24 excavation and removal of artifacts."

25 When would you choose not to excavate and

1 to remove the artifacts; in other words, when would you
2 protect with a reserve?

3 You have identified here that if the site
4 is significant you can do certain things, however when
5 would you not cut?

6 A. Well, I don't think you would -- I
7 want to be careful what I say here. Significance is a
8 very difficult thing to deal with. We would normally
9 defer to advice from the archaeological community,
10 whether it be the Ministry of Culture and
11 Communications or an appropriate licensed
12 archaeologist. Significance might well also be defined
13 in terms of input that we receive from the native
14 community, particularly if it was a site that was of
15 concern to them.

16 There may be situations, for example -
17 and I hate to admit, and I am not sure how often this
18 occurs, I don't think it occurs very often - where in
19 the course of undertaking timber management you might
20 in fact come across a site, it could be in the context
21 of road building, it would have been unknown to you. I
22 mean these things do happen, they happen in downtown
23 Toronto when they're excavating sites.

24 And, in that particular instance, the
25 commitment to do whatever you were doing, whether it

1 was harvesting or road building, would already have
2 taken place. In that case, you might want to defer
3 action until you had an opportunity to salvage the site
4 so that you could learn as much about it as possible,
5 catalogue and store it.

6 In many other instances resources are
7 limited, your ability to excavate all sites is limited
8 and even your desire to do so would be limited. And,
9 in those instances, you might well simply want to put a
10 reserve or modified operations in the vicinity of the
11 sites so as to protect it--

12 Q. But --

13 A. --and not disturb it.

14 Q. But in this context, I believe you
15 have indicated that you might refer to a professional
16 archaeologist to determine whether something is
17 significant?

18 A. Oh, I think we definitely would. I
19 don't think it is a might.

20 MR. MARTEL: Has there been sites that we
21 haven't altered in the province; in other words, left
22 as is, put a zone around it or a reserve and not touch
23 at all?

24 MR. CLARK: Yes, there have been.

25 THE CHAIRMAN: Would you also defer, Mr.

1 Clark, to a representative of the native community?

2 MR. CLARK: Yes, that's really what I was
3 saying. I think that there are two sources of
4 information that we would want -- would make -- would
5 take under consideration. One would of course be the
6 archaeological community and appropriate government
7 agency and, as I said before, the other would be the
8 native community.

9 MR. HUNTER: Q. Now, to the extent that
10 a site might be archaeological and could also be of
11 cultural and religious significance, would that site --
12 if it were both, under what mechanism does it fall
13 here; is it treated as an archaeological site?

14 MR. CLARK: A. Well, I think to the
15 extent it is, it would be, yes. As I said --

16 Q. And that's a decision that would be
17 made by an archaeologist?

18 A. Well, yes. But I think -- I mean,
19 none of these things are -- often these things are not
20 that complicated. When you find a pictograph on a lake
21 you can argue over whether it is an archaeological site
22 or whether it is a site of religious and cultural
23 significance. I would probably agree quite quickly
24 that it was both.

25 And I think the important thing is that

1 as soon as you identify that particular site, either
2 you identify it or somebody brought it to your
3 attention through the planning process, you would then
4 have to bring the right parties together, sit down
5 around the table and identify the importance of that
6 site and what measures would be appropriate to protect
7 it.

8 Now, as I say, you can talk about whether
9 it's an archaeological site or a heritage site. I
10 think the important thing is knowing who has concerns
11 about it, what their concerns are, and what the most
12 appropriate means of dealing with it are and you may --

13 Q. So, therefore, the process of getting
14 the information to you is more important than a
15 classification system?

16 A. Well, I don't want to downplay the
17 judicious use of words but, yes, if somebody tells me
18 there is a burial ground and it has significance to
19 them, I don't argue about whether it is an
20 archaeological site at all, I say it's a value, which
21 we have talked about at length, and it becomes an area
22 of concern and there is a planning process that allows
23 us to identify what particular problems or issues are
24 important relative to that particular value and we go
25 through a process of identifying alternatives for

1 dealing with it. And I think that's the important
2 consideration.

3 Q. So let's go back to the first point.
4 The success then of the system, is it fair to say, is
5 substantially predicated upon the native communities
6 providing you with information?

7 A. I think that is an extremely
8 important part of the system.

9 Q. So there is no early warning system
10 in your own planning system, absent the native
11 information, that would allow you to deal with these
12 issues?

13 A. Well, I think there is. I think in
14 Panel 7 we talked a lot about the kind of information
15 that we have at our disposal that allows us to make
16 decisions up front.

17 We do have access to a significant amount
18 of information on archaeological sites throughout the
19 area of the undertaking, and that information would
20 normally be made available to the planning team, and we
21 consult directly with the Ministry of Culture and
22 Communications with respect to that kind of
23 information.

24 And so that much in fact of the knowledge
25 that relates to archaeological sites and, in that

1 context also, these would include many sites, I
2 presume, of religious and cultural significance, is
3 made available through the Ministry of Culture and
4 Communications.

5 Q. Made available to who?

6 A. So that we don't go into this blind
7 entirely, but I want to stress we do also rely very
8 much on the native community to identify other sites
9 that may be significant as well that we or the other
10 ministries are unaware of, in this case Culture and
11 Communications.

12 Q. But I believe you said -- I asked you
13 if the system was really predicated upon the native
14 community providing you with information, and I think
15 you said yes.

16 A. That's a very important component of
17 it, yes. I don't want to downplay that because I think
18 the native community is the -- people in the native
19 community are the only people who can tell us what
20 sites are important to them.

21 Q. It is my understanding, Mr. Clark,
22 that the native communities are very reluctant to share
23 that information with the Ministry.

24 Could you help me as to why you think
25 that is the situation or, firstly, do you agree with

1 that? You may not agree with my observation.

2 A. I don't agree with that entirely. I
3 know, for example, when I was the regional parks
4 coordinator in the northeastern region in the early
5 days the Historical Sites Branch, as it was called
6 then, was part of our organization and so that I had
7 archaeologists on staff and historians and my staff
8 spent a great deal of time, for example, talking to
9 native people because that was one way that we were
10 able to get information on archaeological sites as part
11 of that program.

12 So that I can recall my staff spoke with
13 people at length in the Temagami area, I can remember
14 they had extensive discussions with people on the north
15 shore of Lake Superior, particularly between Wawa and
16 Sault Ste. Marie because that's the geographic area
17 that we were dealing with and, in fact, we were able to
18 get a great deal of information from individuals in the
19 native community that was quite important to the
20 programs that we subsequently -- the field programs
21 that we designed to look for sites in those areas.

22 So I think that there probably are
23 significant concerns that the native community does
24 have about exposing all information and specific
25 information on sites but, on the other hand, I

1 certainly found in many instances that there was a
2 fairly high degree of cooperation.

3 And I think the example of the
4 situation -- the site that I have referenced on Keys
5 Lake was a good example where there was an obvious
6 value there and there was concern about having that
7 value compromised, if you want, by timber management
8 and it was drawn to our attention.

9 So I wouldn't want to create the
10 impression that it's a bleak situation and that we
11 aren't able to get information.

12 Q. Well, I suspect there will be other
13 evidence at a later point in time on that, no doubt.

14 A. Well, I do think that's very
15 important. I think -- if you are asking me that
16 question, I think it might be more appropriate to ask
17 your clients that question.

18 Q. I will. Could we go to Volume 84
19 again and to 14138.

20 A. The one point -- just one last point.
21 I just don't want to let that go the way it sounded.

22 I think from our point of view, the point
23 I would like to make is we try very hard to get this
24 information and we make a very conscious effort through
25 that timber management planning process - and I hate to

1 keep going back that - to notify the various native
2 communities in the area that's going to be planned that
3 we are going to be undertaking planning.

4 We notify people in writing on four
5 separate occasions and, as I think Mr. Pyzer described
6 at some length, we also normally contact people
7 verbally as well because of ongoing working
8 relationships that often exist with native communities.

9 So I just want to stress that there may
10 be instances when information isn't forthcoming, but we
11 make a very conscious effort to try and get it.

12 Q. Well, I suggest to you, Mr. Clark,
13 that too may be a subject of some debate.

14 A. Just one last point about
15 archaeological versus heritage sites and so on. You
16 are not dealing with the expert in this matter and we
17 are in the process of creating Heritage Guidelines, and
18 while I haven't been directly involved in that
19 particular process, I have no doubt that much of the
20 discussion revolves around the definition of the
21 various kinds of sites that we will be dealing with in
22 those guidelines.

23 And I am sure that you will find all
24 kinds -- when they're ultimately developed, all kinds
25 of distinctions in terms of the built environment and

1 so on that serve to further define the resources that
2 we are dealing with there.

3 Q. So your measures as identified on
4 Table 32 and on Table 21 may not be appropriate in all
5 the circumstances; is that correct?

6 A. Well, I think that you are going to
7 see a further refinement of that language. Hopefully
8 that's what the guidelines will do.

9 Q. Well, perhaps you can -- I was just
10 going to turn to that. At Volume 84 at 14137 Mrs.
11 Koven I believe said:

12 "The guideline that is being developed
13 now for the protection of heritage and
14 archaeological sites..."

15 That's what we are referring to -- that's
16 what you are referring to; is it?

17 A. That's correct.

18 Q. Okay. And I just want to ask you
19 then, is this the draft guideline that I have here now?
20 (handed)

21 A. It certainly appears to be.

22 MR. HUNTER: Mr. Chairman, I think it
23 would be appropriate, I just want to enter this as an
24 exhibit and ask some questions in relationship to it
25 with respect to this draft guideline.

1 THE CHAIRMAN: Very well. Exhibit 530.

2 MR. HUNTER: (handed)

3 THE CHAIRMAN: Thank you.

4 ---EXHIBIT NO. 530: Document entitled: Timber
5 Management Guidelines for the
Protection of Heritage Resources.

6 THE CHAIRMAN: I suppose we ignore the
7 business on the front page there: "Not to be quoted or
8 distributed"?

9 MR. FREIDIN: It might come as a surprise
10 to some, but it isn't.

11 Mr. Chairman, if I can just advise that
12 the Ministry of Natural Resources, although they had a
13 representative I believe on the working -- at the
14 workshop, the draft has not been reviewed by the
15 Ministry of Natural Resources. And I think when Mr.
16 Clark indicated that this appears to be a draft
17 guideline, that perhaps we should make it quite clear
18 that Mr. Clark has not been involved in this particular
19 process at all.

20 MR. HUNTER: Thank you, Mr. Chairman.

21 Q. I just want to draw your attention,
22 Mr. Clark, to the -- are you familiar with this
23 document? I appreciate what Mr. Freidin has said.
24 Have you had the opportunity in the past to review this
25 document?

1 MR. CLARK: A. No, I have not reviewed
2 it.

3 Q. May I ask why, sir, why you have not
4 been involved in this process?

5 A. Well, I'm just looking at the date on
6 this. I have been pretty well tied up here for a long
7 time and I guess the other -- I haven't been involved.
8 I think probably I would have been involved if I were
9 doing the job that I normally do.

10 I think I actually attended one meeting
11 on these at the very outset, a very early meeting on
12 these guidelines, not on a draft, just at the time we
13 were starting the process. And I suppose it was my
14 feeling that it would be almost more appropriately for
15 me not to review them until they got to the point where
16 they were completed because then I wouldn't be talking
17 about a draft, I would be talking about something that
18 had approval that would be meaningful to the Board.

19 Q. What would be meaningful to the
20 Board?

21 A. Well, if indeed I am asked to comment
22 on these, I am simply commenting on a draft that has no
23 official status in terms of MNR, MCC or the other
24 parties that are involved in it. It is simply a draft.

25 Q. Well, I am curious though as to what

1 appears -- I am curious that you are providing evidence
2 with respect to mitigation measures in terms of
3 archaeological sites and cultural sites and yet there
4 are guidelines being prepared which deal with that very
5 same subject and there would appear to have been -
6 correct me if I am wrong - no integration between that
7 which is being proposed in evidence and the guidelines?

8 I'm not suggesting that this hearing
9 ought to be about determining what these draft
10 guidelines should be about, but it seems to me fair to
11 say to you, Mr. Clark, which is the better system, that
12 which you are proposing or that which is being proposed
13 here?

14 A. Well, my system, if you want to call
15 it that, as I think I indicated, really is what I would
16 refer to as typical practice in the Ministry at this
17 point in time.

18 I did note at the bottom of Table 21 and
19 elsewhere in that document that we were in the process
20 of producing guidelines, and presumably when those
21 guidelines are completed and approved they will
22 supersede anything that you see here.

23 So at the time when we put this evidence
24 together there was a recognition that there was a need
25 to provide additional direction and to come up with a

1 set of guidelines. The guidelines were not complete,
2 so my evidence simply reflected common practice.

3 THE CHAIRMAN: Mr. Clark, let's try and -
4 if I might, Mr. Hunter--

5 MR. HUNTER: Mr. Chairman.

6 THE CHAIRMAN: --just ascertain what the
7 Ministry's involvement was. You were involved at the
8 outset because of your involvement in the Class EA
9 proceeding, you were no longer involved after an
10 initial--

11 MR. CLARK: That's correct.

12 THE CHAIRMAN: --involvement at the
13 beginning of the process. Is anyone from MNR involved
14 at the present time?

15 MR. CLARK: Yes, if it may be helpful.
16 The impetus to develop these guidelines came about as a
17 result of discussions between the Ministry of Natural
18 Resources and the Ministry of Culture and
19 Communications. We obviously had real concerns because
20 we were involved in timber management and a variety of
21 other land management activities, all of which could
22 have effects and, often, negative effects in
23 archaeological and historic sites. So there was a need
24 identified.

25 A consultant was then hired to facilitate

1 guideline production much along the same lines as the
2 Tourism Guidelines. A steering committee was then
3 established made up of the Ministry of Natural
4 Resources, the Ministry of Culture and Communications,
5 representatives from the forest industry and the
6 archaeological community. And then, after that, a
7 letter of intent was sent out to a broad audience
8 asking for a statement of interest; in other words,
9 we're producing these guidelines, we would like your
10 input - I don't have the letters - and presumably would
11 like you to identify the way in which you might be
12 involved in the process.

13 And then a number of workshop
14 participants were chosen based largely on response to
15 that letter. And I can't give you the details of how
16 often those workshops have occurred or any of those
17 details, but certainly the Ministry of Natural
18 Resources has been and continues to be a main actor in
19 the process because we are really going to benefit
20 hopefully as a result of the production of these
21 guidelines.

22 THE CHAIRMAN: Well, if they were a major
23 actor in the process leading up even to this first
24 draft, then would not the Ministry have a position with
25 respect to the draft before us?

1 I mean, this may be the first time you've
2 seen this document, but surely it's not the first time
3 that other members of the Ministry have seen this
4 document?

5 MR. CLARK: No, I have no doubt that the
6 people in the Ministry who were involved on the
7 steering committee and in the workshops, that they are,
8 have reviewed this material.

9 THE CHAIRMAN: Thank you.

10 MR. HUNTER: Q. Well, I simply wanted to
11 draw your attention. Mr. Rogers, who is managing the
12 Class EA, sat in on the steering committee of this
13 particular activity, so I am presuming there is some
14 discussion between Mr. Rogers who is involved in the
15 steering committee of this and this hearing.

16 MR. MARTEL: Were there any native people
17 on this?

18 MR. HUNTER: Excuse me, Mr. Martel?

19 MR. MARTEL: Any native people involved
20 in the steering committee?

21 MR. HUNTER: No, sir.

22 THE CHAIRMAN: Well, there may not be
23 from your particular --

24 MR. HUNTER: Not in relationship to the
25 material here, no.

1 THE CHAIRMAN: Well, what about somebody
2 from Treaty No. 3, the second from the bottom, and Ms.
3 Palowski.

4 MR. HUNTER: I'm informed, Mr. Martel -
5 and I could be subject to correction - that there were
6 no native people involved in the steering committee,
7 there were some native people involved as participants
8 in the workshop.

9 MR. CLARK: That's correct.

10 MR. HUNTER: Sorry, Mr. Jeffrey.

11 Q. Perhaps, Mr. Clark - and I accept
12 your modesty that you are not an expert in
13 archaeological activity - but I'll ask you to take a
14 very quick look at the definitions and categories of
15 heritage resources, and could you please help the Board
16 with respect to the relationship, if any, between the
17 definitions and categories that are outlined at 2.0 and
18 the definition and categories that you have provided to
19 the Board on Table 32 and 21, for example --

20 THE CHAIRMAN: Mr. Hunter, given the fact
21 this witness hasn't seen this document before, would
22 this be an appropriate time for the afternoon break so
23 he could, during the break, take a look at these
24 sections?

25 MR. HUNTER: Okay. I would appreciate a

1 bit of a break too. Thank you.

2 THE CHAIRMAN: Very well. We will break
3 for 20 minutes at this time.

4 Thank you.

5 ---Recess taken at 2:50 p.m.

6 ---On resuming at 3:25 p.m.

7 THE CHAIRMAN: Thank you. Be seated,
8 please.

9 MR. HUNTER: Q. Mr. Clark, just for my
10 interest -- in fact, I draw you to page 21 of the
11 guidelines.

12 MR. FREIDIN: These are the draft...?

13 MR. HUNTER: The draft guidelines, yes.
14 There other guidelines?

15 Q. Exhibit 530. Just for my
16 edification, who is -- or do you know on the steering
17 committee who Jean Luc Pilon is from Orleans, Ontario?

18 MR. CLARK: A. No, I don't.

19 Q. Okay. Mr. Pryor for Ecological
20 Services. Is he -- I believe he has been in attendance
21 here and he is providing consulting services to the
22 Ontario Forest Industry. Are you familiar with him?

23 A. No, I am not, no.

24 Q. Okay. Do you have any idea as to why
25 there are no native individuals on the steering

1 committee?

2 A. No, I don't, I'm sorry.

3 Q. Okay, thank you. If I could go to --

4 A. I would like to point out, just so we
5 don't leave that dangling too long. You are right,
6 there are no native people on the steering committee.
7 There are I believe three people who are associated
8 with native organizations that are on the workshop and
9 I just draw your attention on that particular page to
10 the last three names: Donna Palowski, Policy Analyst,
11 Nishnawbe-Aski Nation, Dean Jacobs, Walpole Island,
12 Council, Wallaceburg, Ontario and Chief Willie Wilson,
13 Executive Director, Grand Council Treaty No. 3 in
14 Kenora.

15 Q. I am curious as to whether the role
16 of experts, since natives are experts in culture, is
17 the basis of their entry as workshop participants, or
18 do you think that that expertise would qualify them to
19 be on a steering committee?

20 A. I suppose you could qualify them to
21 be in either place.

22 Q. Thank you. If you could go to page 2
23 and all I would like to do here is to attempt to
24 correlate the definitions and the categories on page 2
25 and 3: Cultural landscapes, structures. Are we

1 together, sir?

2 A. Yes, we are.

3 Q. Archaeological resources and
4 traditional land use areas. Now, these are categories
5 of heritage resources; is that correct?

6 A. Yes, that's correct.

7 Q. Are heritage resources archaeological
8 resources?

9 A. Well, they obviously have made a
10 distinction here because they do identify
11 archaeological resources as a separate category. So in
12 terms of their particular terminology, they factored
13 them out as being limited to things like pictograph
14 sites, burial sites and so on, the items that they have
15 identified on page 3 under 2.3.

16 Q. So these are a very specific feature?

17 A. That is -- in terms of this
18 particular terminology--

19 Q. Yes.

20 A. --yes.

21 Q. Okay. So it would be fair to say
22 that pursuant to these guidelines that archaeological
23 resources are predefined; is that correct?

24 A. That's correct.

25 Q. Thank you. Could you -- if we go to

1 cultural landscapes, structures and traditional land
2 use areas is it fair to say that these correlate to
3 your category of cultural and religious sites?

4 A. They may do.

5 Q. Could you help me there then?

6 A. Well, certainly many of them would.
7 I don't know if a bridge is a cultural or religious
8 site or a dam.

9 Q. Mm-hmm.

10 A. On the other hand, a cabin could be,
11 a burial mound probably most certainly would be. So
12 there is certainly some correlation, but it's not --

13 Q. It's not perfect?

14 A. It's not a one-to-one relationship,
15 no.

16 Q. Okay. If I draw your attention to
17 page 12, 6.2:

18 "Where the heritage resources of native
19 origin (the native community) which has
20 the historical relationship to the
21 heritage resource in question, shall be
22 considered an expert in determining its
23 significance."

24 That seems to me to leave room for other
25 experts. Would you agree with me there?

1 A. Yes, it does.

2 Q. And perhaps you could help the Board
3 and myself because I have attempted to try to identify
4 the significance of that designation in terms of the
5 role that such an expertise might play in the
6 decision-making process with respect to the
7 identification and the protection of a heritage
8 resource and I am having difficulty doing that.

9 Can you help me there, or is that --

10 A. Well, I could try and give you an
11 example emphasizing once again I am not an expert in
12 this area.

13 Q. Mm-hmm.

14 A. But if you're talking about
15 significance, I guess there are a number of factors
16 that you might want to look at and one would be the
17 occurrence of a particular kind of heritage resource.

18 For example, if you were looking at a
19 traditional camping area and you were able to determine
20 through the assistance of an archaeologist the
21 particular age of that site and the kind of inhabitants
22 that used it and so on and the uses that took place in
23 that and you were also able to determine that there a
24 large number of other sites like it that had already
25 received protection elsewhere, it might suggest that

1 that site was not as significant as a site which was
2 the only one that was extant in a particular area. So
3 it's the frequency of occurrence, the nature of the
4 resources that are found in that particular site.

5 Q. I don't think we are together, Mr.
6 Clark. I thought my question was directed at where in
7 the decision-making process does the purported
8 expertise of the native community come into play in the
9 decision-making process?

10 A. Okay.

11 Q. Perhaps you were getting to that.

12 A. My apologies. Then I obviously was
13 on the wrong track.

14 Q. If we don't know, then fine.

15 A. No, I think we do know. I think we
16 do know. I think on a number of occasions now we have
17 talked about the planning process and we have talked
18 about the first phase of -- the step in the planning
19 process being the consolidation of background
20 information and in association with that particular
21 activity is an invitation to participate where the
22 Ministry and company involved in production of the plan
23 notifies a variety of parties - and I emphasize that
24 there is a commitment here that we notify in writing
25 Indian bands -- or native communities I should say -

1 that we are involved in the planning process.

2 And in that request for their
3 involvement, it would be normal for us to hope that the
4 native community would identify sites that were of
5 significance to them. Those sites would be identified
6 where it was appropriate and if it was made clear to us
7 that -- by the native community that they did not want
8 these sites to be made public, then they wouldn't be,
9 but in the normal course, in sites -- if that wasn't a
10 problem, these sites would be identified on a values
11 map which would form part of the information that would
12 be provided at an information session, public
13 information open house.

14 Now, inasmuch as this was identified as a
15 value, I think we have explained in our testimony on a
16 number of occasions that we can go through a number of
17 steps in the comprehensive planning process that is
18 outlined in Appendix 1 wherein we identify a number of
19 alternative solutions for dealing with that particular
20 value and it is in that process at the time that we are
21 engaged in that process that we would normally be
22 directly involved and consulting with whoever it was
23 who identified the value.

24 So that in the Keys Lake example where a
25 Pow-Wow site was identified, the company was notified,

1 there was correspondence between the band, the company
2 and MNR and it was agreed that a field trip would be
3 initiated and that the various parties would have an
4 opportunity to look at the site and discuss it.

5 Now, I think, you know, that is not
6 untypical of the way that process can work, but the
7 important thing was that there is consultation and
8 collaboration. And really, you know, it's not
9 difficult, we are not in a position to judge in a lot
10 of instances how best to protect those sites. I think
11 the people who value them are best able to help us in
12 identifying what the value is, what the geographic
13 extent of the value is, and then we can start talking
14 in terms of what the most appropriate prescription for
15 dealing with the site is.

16 So there is definitely a process in place
17 that does provide ample opportunity for the parties to
18 become involved.

19 Q. My question, Mr. Clark, was really an
20 attempt to identify, in the context of these
21 guidelines, the role that the native people played. Do
22 you have any -- can you assist us in that regard or
23 again is it a question of...

24 A. Well, I think the only difference in
25 my answer would be - and, I mean, I haven't been

1 through these in a great deal of detail.

2 Q. Okay.

3 A. And that is obvious.

4 Q. Okay.

5 A. My answer would be, just like with
6 the other guidelines, at the time that the value is
7 identified we then -- these guidelines would provide
8 direction on how -- what appropriate steps might be
9 taken to deal with a particular situation, whether it
10 be an archaeological site or a cultural landscape or
11 any of the other resource features and values that have
12 been identified in the guidelines.

13 This, as I think we pointed out, would be
14 a tool that would be of value to Ministry personnel,
15 other government personnel, in this case MCC, and in
16 the case where we were dealing with a native community,
17 to them as well.

18 Q. Okay.

19 MR. HUNTER: I don't think, Mr. Chairman
20 this is the time to get into -- obviously Mr. Clark is
21 not, and that is fair, familiar with these but at some
22 stage. I am not sure what the status of these are or
23 what the Ministry intends to -- how they intend to deal
24 with it, but I certainly would like to come back to
25 them when we discuss the establishment of timber

1 management plans simply because these guidelines detail
2 a step-by-step process in relationship to timber
3 management guidelines and I would like to be...

4 THE CHAIRMAN: Well, by the time we get
5 to Panel 15, Mr. Hunter, these things may have attained
6 some kind of status, I don't know.

7 But, in any event, I trust Mr. Freidin
8 you will keep the Board advised as to where these
9 guidelines go, if you are so advised?

10 MR. CLARK: I think I may be able to help
11 a little bit. I am drawn back to the first page, it
12 says: "Not be quoted or distributed outside the
13 workshop participants", and I am not -- I think the
14 only reason I mention that isn't because I am trying to
15 be a little obnoxious, it's simply to point out that --

16 MR. HUNTER: Q. That role is reserved
17 for me, Mr. Clark.

18 MR. CLARK: A. Okay. Is simply to point
19 out that we are in the middle of a process that, at
20 this point, is restricted to the workshop participants
21 and the steering committee and think that's appropriate
22 at this time.

23 When they reach a point in their
24 deliberations where they reach some consensus on what
25 they think an appropriate product is; if, as we

1 normally do, we follow the normal course, the draft
2 will be sent to a very wide cross section of groups
3 that might be affected by the guidelines.

4 That was the approach in the Moose
5 Guidelines, the Fish Guidelines and the Tourism
6 Guidelines and I think it's more appropriate when you
7 reach that point, where the people that are directly
8 involved feel they have something that they feel
9 comfortable with, that we can then talk about whether
10 the product is appropriate or not.

11 Q. Mr. Clark, I am going to direct some
12 of my questions to Dr. Euler at this time and I am
13 principally going to be looking at Table 32.

14 Perhaps the Board might, if they wish --
15 well, I am only going to be referring to some of the
16 comments in Exhibit 469 -- sorry, I apologize, 433,
17 which was submitted by Dr. Euler and Mr. Baker.

18 Q. I think just -- Mr. Clark, before we
19 get into this, I don't really want to get into another
20 discussion but simply to confirm, and perhaps if I have
21 the -- I just simply want to confirm with you that the
22 comments on page 1027 reflect the statements made in
23 the Class Assessment on pages -- basically on page 7,
24 Part I of the Class Assessment, Part I, The
25 Undertaking. I may be --

1 "Because of the historical context and
2 geographical extent, local native can be
3 specifically affected by timber
4 management activities."

5 And then it discusses the role of MNR and
6 then, in the subsequent paragraphs:

7 "It is not possible to define and assess
8 the potential impacts of timber
9 management activities on aboriginal or
10 treaty rights in this Class Assessment."

11 Essentially the comments on 1027 reflect
12 the position of the Ministry as identified in the Class
13 Assessment; is that correct, sir?

14 MR. CLARK: A. Yes, that's correct.

15 Q. So, therefore, did you prepare those
16 statements on 1027?

17 A. I prepared them on 1027 in
18 consultation with other Ministry staff and, of course
19 having, read this material.

20 Q. Dr. Euler, if you could -- sorry, to
21 disturb you.

22 DR. EULER: A. That's all right, that's
23 what I'm here for.

24 Q. If you go to Volume 83 at page 13865.

25 A. Yes, I have that.

1 Q. If I could draw your attention to the
2 bottom of the page, the line commencing at line 23 and
3 proceeding over to the next page, and I will just read
4 it:

5 "DR. EULER: No, no. The animals that
6 are allocated to the native communities
7 come right off the top. That is the
8 first priority as best we know it. So
9 these are the animals that are left after
10 the native harvest has been taken to the
11 best of our ability.

12 Q. I'm presuming here, is it fair to
13 say, that those are the numbers that you
14 are referring to in the Strategic Land
15 Use Plans.

16 A. Yes, northeastern Ontario Strategic
17 Land Use Plan."

18 If I go back to 13862, you've led
19 evidence in relationship to the Strategic Land Use
20 documents.

21 A. Yes.

22 Q. There are numbers identified there.

23 A. Yes.

24 Q. And. As I understand your evidence,
25 sir, you are saying that those numbers do not include

1 resources that are allocated to the native communities;
2 is that correct?

3 A. Yes, that's correct in that the
4 numbers -- when we specify a harvest, that's -- the
5 harvest is not part of what the native communities
6 would take.

7 Q. Okay. Now, let's go back to your
8 evidence. Who allocates resources to the native
9 communities?

10 A. Well --

11 Q. Who makes that decision?

12 A. Those are all in their treaty rights,
13 to the best of my knowledge. It wouldn't be a matter
14 of allocating something that is given to them by treaty
15 right.

16 Q. I see. So that allocation or the
17 taking off the top is based upon a treaty right as far
18 as you are concerned?

19 A. That's right.

20 Q. Thank you. And no number is -- is a
21 number specified with respect--

22 A. No.

23 Q. --to that allocation?

24 A. No, no. No, because that is all
25 governed by their rights under the various treaties

1 that have been agreed to.

2 Q. So, therefore, there is -- explain to
3 me the thinking process behind that? Perhaps -- I'm
4 focussing here the animals that are allocated. I'm
5 focussing on that, Dr. Euler, because it suggests to me
6 some type of process. But are you suggesting that
7 there is no fixed number allocated?

8 A. Oh, yes, that's correct and perhaps
9 it was a poor choice of words, but the animals that
10 they take are completely governed by treaties and we
11 don't say how many they should be or where they should
12 be. That is all covered under other jurisdiction.

13 THE CHAIRMAN: But, Dr. Euler, would you
14 not want to know how many are taken so that you can
15 regulate the amount that are left?

16 DR. EULER: Oh yes.

17 THE CHAIRMAN: That's the numbers that
18 are taken.

19 DR. EULER: We would like to know that
20 very much, yes, and we try to find that out whenever we
21 can.

22 MR. HUNTER: Q. So how then, sir, do you
23 arrive at the harvest numbers which you do have in the
24 Strategic Land Use Plans. In other words, are you
25 making a guess as to how much is taken?

1 DR. EULER: A. Well, no, but it's quite
2 a technical explanation and I can go into it if you
3 wish, it may take some time. I mean, it's a very
4 technical matter how you decide how many animals the
5 population can permit to be harvested.

6 Q. Well, perhaps what I will do, rather
7 than take a chance on that - we may have to do that,
8 but what I am concerned about is: How do you take into
9 consideration the native consumption, or don't you?
10 This is where I am having the difficulty.

11 A. Well, that's right. Well, you may
12 remember from the evidence and the questioning that Mr.
13 Hanna had, he talked about how we had used -- we had a
14 computer model called ONEPOP and this is a model that
15 aids in our decision-making and we talked about this a
16 bit when Mr. Hanna was here.

17 Well, this is a population model and so
18 we would put in all the information that we know about
19 the population or whatever information we have about
20 the population and that helps us determine how many
21 moose can be allocated to licensed hunters.

22 So in that modeling process we would take
23 our best estimate of what native people take and
24 calculate then how many can be taken by licensed moose
25 hunters after our best estimate of native kill has been

1 put into the modeling process.

2 Q. Is that estimate, sir, based upon a
3 provincial evaluation? Let me say, there's no magic
4 here because what I want to do is get to the difference
5 between the provincial concern and the local concern.

6 But in terms of the allocation that is
7 made -- let me rephrase this. In terms of your
8 estimate as to the allocation, the guesstimate that is
9 made in terms of native kill--

10 A. Mm-hmm.

11 Q. --is that made, sir, on the basis of
12 a provincial evaluation and what is the relationship
13 between that and your best estimate as to a local kill?

14 A. Well, no, that's not made
15 provincially because it varies substantially across the
16 province. We do our best to ascertain what it is on a
17 local level and then we incorporate those numbers into
18 our process of calculating how many tags can be issued.

19 Q. And how is that local assessment
20 made, sir?

21 A. Well, for the most part it has to be
22 done, to the best of my knowledge, by talking to native
23 communities wherever possible and asking them what has
24 taken place. See, we don't have any -- we do not have
25 a formalized procedure that is implemented everywhere,

1 it's just simply talk to them wherever we can and just
2 ask them, as simply as we can, what happened.

3 Q. Would it be a fair assumption, sir,
4 that your ability to obtain that information varies
5 across the province?

6 A. Yes, it does.

7 Q. So that the nature of the
8 relationship as between the regional office and varying
9 native communities would vary?

10 A. Yes.

11 Q. Thank you.

12 A. We did discuss this a bit in
13 Interrogatory Question No. 3 where we put out a little
14 more information about the fact that we use big game
15 non-hunting mortality cards for example, and so there
16 is a bit more in that interrogatory.

17 Q. Is the allocation made at a local
18 level?

19 A. The allocation for -- what's that, or
20 what?

21 Q. Well, let me come back to that
22 because I am trying not to get into the mechanics or
23 the technicalities of how you establish the population.
24 You've gone over that I don't want to -- I am more
25 interested in the process and how that affects the

1 native communities. Let's go to your evidence in your
2 document on page 2 and I thought some very, very candid
3 comments.

4 A. Can you tell me what you are
5 referring to, please?

6 Q. Exhibit 433, this is your evidence, I
7 believe.

8 A. 433 is the paper Featured Species
9 Management in Ontario?

10 Q. That's correct, sir.

11 A. And page 2 is that?

12 Q. That's correct, yes. As I understand
13 your evidence, Dr. Euler, your concern is principally
14 an understanding and a maintenance of a provincial
15 population; is that correct? In other words, what is
16 the numbers of moose across the province.

17 A. Well, that is a very important
18 concern, yes. I wouldn't say it's our only concern,
19 but it's certainly a very important one. We have spent
20 a lot of time here at the hearings talking about it.

21 Q. Yes. Okay. And then you go down to
22 the bottom -- to the large paragraph on page 2:

23 "Although some wildlife may suffer
24 negative impacts in a small area for a
25 relatively short time, application of the

1 guidelines over each forest management
2 unit where moose or deer are concerned
3 will ensure that wildlife populations are
4 maintained and enhanced over all forest
5 management units in the province."

6 What I am trying to come to grips with
7 is, that if you do not know what the consumption -- the
8 kill level is at the local level, then how do you
9 equate whether or not there has been an impact or will
10 be an impact at the local level in terms of forest
11 management activity?

12 Your evidence seems to suggest that there
13 can be a negative impact in a smaller -- I'm
14 presuming -- I'm substituting local area there.

15 A. Yes, that's right.

16 Q. If you have no information about the
17 local kill in the native communities then, firstly, how
18 can you evaluate whether the extent of the impact and,
19 secondly, what the relationship of that would be, let's
20 assume to a regional level?

21 A. Well, the way you would deal with
22 that is by aerial surveys.

23 Q. Okay.

24 A. If in this hypothetical that you are
25 posing we don't know anything about the kill, we would

1 survey the herd using aircraft and if we don't know, in
2 this hypothetical, how many were killed, then we would
3 look at how many remain because that's the key -- the
4 key piece of information anyway is to know how many are
5 there.

6 So if we get that, it may not be as
7 important in a certain small area to know exactly how
8 many were killed by the native community.

9 Q. But does your aerial surveillance
10 provide sufficient information in the absence - and I
11 am presuming for the sake of this question - in the
12 absence of native information, are your methods
13 sufficient to determine the extent of the herds where
14 you do not have native information?

15 A. Yes, I believe they are.

16 Q. Okay, fair enough. And that is
17 principally based upon aerial surveillance?

18 A. Well, in this hypothetical that you
19 posed it is. Now, in some other hypotheticals it might
20 not be, but in the one you posed it would be.

21 Q. The hypothetical being where there is
22 no information from the native community?

23 A. About the kill. See, that is a key
24 point.

25 Q. Okay. Help me out there. As

1 distinct from...?

2 A. Well, see, other licensed hunter kill
3 animals and we may know something about that kill or we
4 may know something about the moose population in an
5 area from observations or road kills or from other
6 sources of information.

7 I mean, there is many ways to learn about
8 a moose population and what you are talking about is
9 one of those ways, and it varies tremendously across
10 the province depending on the circumstances.

11 Q. Could you indicate to the Board where
12 the absence of the information from the native
13 communities would have minimal impact upon the
14 evaluation of the herd as distinct from those areas
15 where there might be a more substantial impact?

16 A. Would you like specific geographical
17 areas?

18 Q. If possible, yes.

19 A. Well, I don't think I can do that
20 because, as a local manager, what the local manager
21 would do is use whatever tools and information he had.

22 And it is very hard for me to say: Well,
23 the information about the kill by natives is
24 inadequate, because then we would shift to trying to
25 get more and better information from the aerial surveys

1 in that area, see, and if the kill information from
2 both native community and other licensed hunters was
3 adequate we might have to do less emphasis on the
4 aerial survey.

5 It's a question of shifting balance and
6 resources to get the information you need to make a
7 good decision.

8 Q. And who does that, sir, whose call is
9 it to -- is that the district manager's decision in
10 terms of making that evaluation?

11 A. Yes, formally it's the district
12 manager, yes of course, with the assistance of his
13 district biologist and staff.

14 MR. HUNTER: Excuse me one second.

15 Q. If I could draw your attention, Dr.
16 Euler, to Table 32. Now, the first -- Dr. Euler, I
17 think what I would like you...

18 You can correct me if I'm wrong, Dr.
19 Euler, but I have read the timber management -- Exhibit
20 310 is the Timber Management Guidelines for the
21 Provision of Moose Habitat and I haven't identified -
22 and correct me if I'm wrong - in these guidelines any
23 specific reference to the mitigation, preservation of
24 habitat for the purposes of sustaining moose
25 populations specifically in relationship to the native

1 communities. Now, if I am wrong, please help me there?

2 DR. EULER: A. I don't think you are
3 wrong.

4 Q. Okay. So, therefore, when I go to
5 Table 32 and I'm looking particularly at the interest
6 of the native community in relationship to moose, and I
7 look at the Timber Management Guidelines for the
8 Provision of Moose Habitat, is it fair to say that
9 those guidelines are not of great assistance in terms
10 of enhancing -- firstly, mitigating and then enhancing
11 the local or native interest in the moose kill?

12 A. By native people?

13 Q. Yes.

14 A. Oh, no, I don't think that's fair at
15 all.

16 Q. Okay.

17 A. See. The Timber Management
18 Guidelines for the Provision of Moose Habitat are a
19 technical document that relate to how to make good
20 moose habitat and it doesn't matter whether the moose
21 are harvested by a native person or a licensed hunter
22 just doesn't matter.

23 That's a technical piece of information
24 designed to show how to provide good moose habitat and
25 I think that's the context of its position here in

1 Table 32, that when it is a Ministry's -- when native
2 people have a concern about native and traditional
3 hunting there are a number of tools we would apply.
4 One of those tools is the Habitat Management
5 Guidelines.

6 Q. But if you do not have numbers at the
7 local level, how do you apply those guidelines? If you
8 do not have them from the native community, how do you
9 apply those guidelines?

10 A. Numbers of what?

11 Q. Moose?

12 A. Oh, we do have numbers of moose, we
13 get them from our aerial survey. See, you have to be
14 careful when you talk about moose kill versus moose
15 numbers in the population. They are two very different
16 things.

17 Q. Well then, let me back up. If you
18 don't have numbers of the moose kill in a particular
19 area--

20 A. Yeah?

21 Q. --then how are these guidelines of
22 assistance?

23 A. Well, the numbers of moose in the
24 area or the number of kill are independent of the
25 guidelines. I'm not following your line of reasoning

1 at all.

2 Q. What I am concerned about is how do
3 we -- how does the native community turn to the Moose
4 Management Guidelines and say that by applying these
5 guidelines my interest, my treaty interest in the
6 taking of moose is protected; that is, there will be a
7 sufficient allocation made in this particular local
8 area in order to "ensure" that the treaty interest is
9 maintained. That's the thrust of the question.

10 A. Okay. Well, first of all, native
11 people have rights to harvest moose and there is no
12 limit on those numbers.

13 Q. Okay.

14 A. So they can harvest moose based on
15 their treaty rights and without limit, and then the
16 moose that are left over can be allocated to other
17 hunters. Okay. So Step 1 is to recognize and be aware
18 of those treaty rights.

19 Now, if in a certain area moose habitat
20 was of a lower quality than everyone wanted, then these
21 guidelines help everyone know how to raise the quality
22 of that habitat which eventually, sooner or later, is
23 going to support more moose. And so one raises the
24 quality of habitat and as managers we can control the
25 number of moose killed by licensed hunters, but we

1 don't control the number of moose killed by native
2 people under treaty rights.

3 So we then manage in and under those
4 conditions doing our best to know how many moose are
5 there, trying to ascertain whether the habitat needs to
6 be improved or whether it's okay, trying to ascertain
7 how the whole system works to protect everybody's
8 rights as best we can.

9 Q. But perhaps you can help me here,
10 because where my confusion comes - and this is my
11 problem - is let's go down to the second last bullet:

12 "Where the above provisions do not
13 provide adequate protection, habitats of
14 Identified species of concern to native
15 people may be protected on a
16 site-specific basis."

17 And let me explain my confusion to you
18 and perhaps you can help me and the Board.

19 When I read that I presumed that in all
20 circumstances, as it applied to native people, the
21 moose guidelines may not be adequate and, therefore, a
22 site-specific analysis had to be undertaken. Is that
23 an unfair appreciation of the schema that is outlined
24 there?

25 MR. CLARK: A. It may be helpful for me

1 to explain it because I wrote it. Really what we are
2 saying, if you go back -- we talk about traditional
3 hunting, fishing, trapping and gathering areas. So we
4 are assuming that there may be a wide range of species
5 that native people are interested in.

6 They may want to hunt moose, but they may
7 also be interested in fisher and marten for example,
8 and I'm just using that as an example. What we are
9 saying here is, as Dr. Euler pointed out in much of his
10 evidence, when you apply the moose guidelines you, in
11 the course of doing that, provide or may provide
12 habitat for a wide range of other species and to the
13 extent that those species are of importance to native
14 people, you may satisfy their requirements.

15 In instances where, for example, the
16 moose guidelines don't provide the protection that some
17 of these species that are of concern to them, you may
18 have to take other action. Now, one of the examples I
19 think that was used elsewhere in the evidence was a
20 species like fisher or marten where you may want mature
21 conifer and you might have to make -- to take specific
22 action in that instance to provide habitat for that
23 species. And that's really what's being said there.

24 Q. Let me understand that, Mr. Clark.
25 First of all, I was going to try to get to the use of

1 the situation of using moose as a surrogate for other
2 species. So let's try to separate this issue. If we
3 are dealing now strictly with moose, okay.

4 A. Then --

5 Q. Are the moose guidelines the
6 mechanism to be used for the purposes of enriching the
7 habitat?

8 DR. EULER: A. Yes.

9 Q. And, therefore, is the last --
10 "Where the above provisions do not
11 provide adequate..."

12 Is that irrelevant in relationship to
13 moose protection. Is that a fair question, Mr. Clark?

14 MR. CLARK: A. It is as far as I'm
15 concerned. What I have said there is:

16 "Where the above provisions do not
17 provide adequate protection for habitats
18 of identified species of concern..."

19 And I think what we are reading there is
20 other than moose.

21 Q. Thank you. So in other words the
22 protection for moose is the guideline; the protection
23 for other species may be the moose guidelines, if one
24 accepts that it is a surrogate - and there may be
25 disagreement there - and if it is not the moose

1 guidelines then it is on a site-specific basis?

2 A. It may be and that's what I am saying
3 there, that's correct.

4 Q. Now, Dr. Euler, do you agree with Mr.
5 Clark on that? Are the guidelines sufficient to deal
6 with local concerns in terms of the native communities?

7 DR. EULER: A. Yes. In most of the
8 time, in most of the province, yes. However, there may
9 be some relatively unique or unusual circumstances
10 where something might slip through and I think this
11 gives us a bit of a note to say: If something by
12 chance did slip through in a particular area, we can
13 deal with it.

14 Q. And this assumes that these
15 guidelines will apply to areas where native communities
16 have access to moose?

17 A. Yes.

18 Q. Thank you. Dr. Euler, perhaps we
19 could -- just bear with me, I'm trying to shuffle too
20 many pieces of paper here.

21 MR. HUNTER: Bear with me, Mr. Chairman.

22 Q. Now, I would like to dwell for a
23 moment, if I might, on the issue of the treaty rights
24 and this was raised -- the issue of the Strategic Land
25 Use Plans was raised in your evidence, Dr. Euler. And,

1 firstly, I would refer you to Northwestern Ontario
2 Strategic Land Use Plan on page 42. Are we--

3 DR. EULER: A. Yes.

4 Q. Under wildlife.

5 A. Yes, I have that.

6 Q. Is it your view that the Ministry's
7 policy in relationship to native peoples' treaty rights
8 is reflected on page 43 under Strategy:

9 "The objective will be achieved by
10 giving Ontario residents priority in the
11 in the allocation of hunting
12 opportunities and acknowledging the
13 commitment to native peoples' treaty
14 rights."

15 To your knowledge is this still Ministry
16 policy?

17 A. Would you mind, I just couldn't find
18 that and I would like to read it just quickly before.
19 I may have missed the page or something.

20 Q. Northwestern Ontario.

21 A. Yes, I have that. Just a page
22 problem I have.

23 Q. Page 42 -- page 43. If you go to
24 page 43 under Strategy (b), one, two, three, four,
25 fifth bullet -- fourth bullet. I'm fading. The fourth

1 bullet.

2 A. Oh yes, yes.

3 Q. All right.

4 A. Mm-hmm.

5 Q. And if we go to -- I just want to
6 draw your attention, if I might, to the northeastern
7 document and I would draw your attention to page 9 on
8 the right -- on both of our right-hand side in the
9 third paragraph:

10 "The allocation of the region's fish and
11 wildlife resources will be guided by the
12 following priorities."

13 And I go to 1 and then 2. I presume 1 is
14 conservation --

15 A. Yes.

16 Q. And then 2, the resource rights of
17 treaty Indians.

18 A. Yes.

19 Q. Are those policies -- excuse me --
20 does this reflect Ministry policy and is this still
21 Ministry policy?

22 A. Yes, it is.

23 Q. Thank you. And if we proceed to the
24 District Land Use Guidelines, you identify on page -- I
25 am using Dryden as an example.

1 MR. FREIDIN: Do you have another one?

2 MR. HUNTER: Well, there is Dryden, there
3 is Kenora.

4 MR. FREIDIN: Kenora is okay.

5 MR. HUNTER: Geraldton.

6 DR. EULER: We have Kenora.

7 MR. HUNTER: Q. You have Kenora?

8 DR. EULER: A. We have Kenora, yes.

9 Q. Okay.

10 MR. HUNTER: I think, Mr. Chairman, the
11 purpose of this is not only to try to identify but also
12 to give a breadth of the issues that are involved here
13 and how the Ministry has dealt with these.

14 Q. If I go to Dryden, which you don't
15 have I presume?

16 DR. EULER: A. I don't have Dryden, no.

17 Q. Okay. I will simply refer you in
18 Dryden and ask you to look at it. At page 36 and if
19 you will be so kind as to read that to the Board.

20 THE CHAIRMAN: Can you just give us an
21 exhibit number for that?

22 MR. HUNTER: Oh, I apologize, Mr.
23 Chairman. I had presumed that they were exhibits. My
24 apologies.

25 THE CHAIRMAN: I think one or two of them

1 might be, but I am not sure if all of them are.

2 MR. HUNTER: Well, I don't know whether
3 Dryden is. Geraldton -- I am not sure whether
4 Geraldton has been entered or not.

5 THE CHAIRMAN: I think Kenora was, but I
6 am not sure about the other --

7 MR. HUNTER: Kenora was?

8 MR. FREIDIN: As you know, Wawa is in the
9 witness statement for Panel No. 1. Kenora District
10 Land Use Guidelines --

11 MR. CASSIDY: Exhibit 22.

12 MR. FREIDIN: Exhibit 22.

13 MR. CLARK: I think I know the section in
14 the Wawa Plan that you are referring to. I think they
15 are similar.

16 MR. HUNTER: Very similar.

17 DR. EULER: If you want to use Kenora,
18 Mr. Hunter, the same statements are on page 28 of the
19 Kenora plan.

20 MR. FREIDIN: The Dryden District Land
21 Use Guidelines were filed, Mr. Chairman, Exhibit No.
22 44.

23 DR. EULER: Yeah, it's the same wording
24 in virtually all of these plans. So if you want one
25 that you have that's been introduced, you have Kenora,

1 go to page 28.

2 MR. FREIDIN: I have just given the
3 witness Dryden.

4 DR. EULER: And we have Dryden here now
5 if you wish. But the words I think are identical in
6 each one.

7 MR. HUNTER: Q. And that's the same as
8 it is with Geraldton? Has Geraldton been filed?

9 DR. EULER: A. Well, I don't have
10 Geraldton here, but I'm sure the words are either
11 identical or almost identical.

12 Q. To your knowledge, sir, do you know
13 if there is any District Land Use Guideline which does
14 not have a phrase similar to "acknowledging the
15 commitment to native peoples' treaty rights", or there
16 was another one in which it talked about the specific
17 allocation -- not allocation, but...

18 A. No, I don't think -- I don't know of
19 any District Land Use Guidelines that does not include
20 this statement.

21 Q. Thank you. If I take you to Table
22 32, we have the Strategic Land Use Guidelines which
23 have identified a native interest, we have identified
24 the District Land Use Guidelines which have identified
25 an interest, both of which - as I understand them,

1 sir - deal with an allocation -- and perhaps, Mr.
2 Clark, you can help me here.

3 When I go to Table 32 and I am attempting
4 to identify a concern that the native communities have,
5 I don't see mention of those policy objectives as
6 established both in the Strategic Land Use Guidelines
7 and the District Land Use Guidelines in terms of treaty
8 rights and I would simply ask you why those were not
9 included or incorporated into Table 32?

10 MR. CLARK: A. Well, I guess my answer
11 would simply be that in Table 32 when we were dealing
12 with measures to enhance prevent or minimize or effects
13 we were trying to identify the specific tools that we
14 would use. The assumption was made that in making
15 those decisions that we would meet pre-existing
16 obligations of which those policies are good examples
17 which we refer to in Panel 8.

18 So, in other words, as a manager making
19 decisions, for example in how to deal with potential
20 effects of harvesting operations on moose, particularly
21 as it related to native people, I would, I think as we
22 have pointed out, be bound by pre-existing obligations
23 and that would be one of them.

24 So they are not included on the table.
25 We simply identified the tools that we would use in

1 attempting to arrive at a decision.

2 Q. Do you think that the treaty right to
3 take moose - and I use that as a surrogate - is an
4 undefined right or an unclear right?

5 A. No, I think it is pretty clear.

6 Q. Thank you. If we can go back to
7 the --

8 MR. HUNTER: I would like to shift focus
9 for a moment from the question of treaty rights and try
10 to perhaps, Mr. Chairman, deal with this in a broader
11 way and; that is, the question of native interests as
12 distinct from the issue of treaty rights, per se.

13 Q. And perhaps, Dr. Euler, Mr. Clark,
14 you can simply confirm that in, for example, the
15 Northwestern Ontario Strategic Land Use Plan at page
16 4 --

17 MR. CLARK: A. I have that.

18 Q. Sorry?

19 A. I have that.

20 Q. That the policy of the Ministry is
21 that native people living in northwestern Ontario are
22 among those having special interests. Is that still
23 Ministry policy, to the knowledge of either of you?

24 A. Yes.

25 DR. EULER: A. Yes.

1 Q. If I go to page -- if I go to the
2 northeastern Ontario Strategic Land Use Guideline and I
3 go to page 9 on the right-hand side, and it's stated:

4 "Native people living in northeastern
5 Ontario are among the local and
6 traditional users of certain natural
7 resources. When plans are being
8 prepared, the urgent need to communicate
9 effectively with the people must be
10 recognized. This part of the planning
11 process must be given special attention
12 due to the remoteness of some of the
13 settlements and the language
14 differences."

15 And then there is the paragraph that I've
16 referred to previously about resource rights. Is that
17 still Ministry policy?

18 MR. CLARK: A. Yes.

19 Q. Thank you. And again, Mr. Clark,
20 given those policy objectives as established in the
21 Strategic Land Use plans - it seems to me with some
22 clarity - identifying the special interests, why were
23 those not identified or established under Table 32 in
24 terms of mitigation or enhancement?

25 A. I am having a little trouble. Could

1 you just repeat your question for me?

2 Q. Why would the situation of the
3 remoteness of communities identified in Table 32 and
4 the effects that harvesting might have on remote
5 communities in relationship to their use of the land,
6 or is this something that could be covered under the
7 appropriate guidelines?

8 How do you deal with that particular
9 situation, how do you identify that as being a
10 particular concern, and how does the Ministry manage
11 it?

12 A. I'm not answering because I'm
13 thinking about this for a minute.

14 MR. HUNTER: Mr. Chairman, if I am
15 pitching I'm trying to -- I feel the voice fading, so I
16 apologize.

17 MR. CLARK: I don't have a particular
18 answer for you. This information is included in the
19 SLUP or Strategic Land Use Plan for northeastern and
20 northwestern Ontario and, in effect, as I said before,
21 it functions as a pre-existing obligation.

22 In other words, all managers must be
23 mindful of the direction that's provided in those
24 plans; that's why they are there, but I don't
25 necessarily think it implies that it need be

1 specifically restated on the table. I think the table
2 attempts to deal with fairly specific issues like sites
3 of religious and cultural significance, like the
4 availability of animals to meet the needs of native
5 people.

6 The assumption in the table is simply
7 that much of that general direction which you are
8 referring to now is what we have referred to as a
9 pre-existing obligation that managers must be mindful
10 of when they are dealing with issues of the kind that
11 have been identified here.

12 MR. HUNTER: Q. Therefore, you would
13 have no objection if the Board were asked to consider
14 the efficacy of the Class Assessment in terms of
15 meeting pre-existing obligations under treaty rights
16 firstly, and more ambiguously, special interests of
17 native communities in terms of the Class Assessment.
18 Would you disagree with me, Mr. Clark, on that?

19 MR. CLARK: A. I'm not sure I understand
20 what you're saying.

21 Q. Would you object to the insertion in
22 Table 32 of clear references to treaty rights and the
23 need to mitigate and enhance such firstly and,
24 secondly, would you object to the inclusion in the
25 Tables 32 of special interests of native communities

1 and the need to mitigate and/or enhance such interests
2 as part of MNR evidence in relationship to this Class
3 Assessment and that this is something that should be
4 addressed in the establishment of timber management
5 plans.

6 Do you have difficulties with that?

7 A. Well, I don't really have difficulty
8 with it because these are Ministry policies and they
9 are already enunciated in the documents that you have
10 just referred to.

11 So in that sense I don't have any
12 particular problem with the idea of restating them on
13 the table.

14 DR. EULER: A. On the other hand, you
15 see, treaty rights involve harvesting of wild animals.
16 They don't have much of anything to do with timber
17 management plans.

18 Q. The question is, Dr. Euler, the
19 extent and the degree to which the establishment of
20 timber management plans should take into consideration
21 those rights and interests or the extent to which those
22 plans do not deal adequately with the preservation and
23 maintenance of certain species and the rights of native
24 people to have access to those species?

25 MR. FREIDIN: Are we talking about moose

1 or have we changed the topic completely?

2 MR. HUNTER: Well, I am certainly -- we
3 are talking generally about treaty rights, Mr. Freidin,
4 and I think that those would apply beyond moose.

5 MR. FREIDIN: Mr. Chairman, I would just
6 restate - and I won't necessarily do it completely
7 accurately - but we rely on the evidence of Mr. Crystal
8 in Panel No. 6 and to the point that the Ministry does
9 in fact give effect to treaty and aboriginal rights as
10 they are understood at this present time, subject to
11 those qualifications which were dealt with extensively
12 in Panel 6.

13 THE CHAIRMAN: Excuse me a moment. Are
14 you saying, Mr. Freidin, that if words to that effect
15 were included in Table 32, that they would be
16 interpreted by the Ministry in accordance with Mr.
17 Crystal's statements?

18 MR. FREIDIN: That's correct.

19 MR. HUNTER: As distinct from the
20 statements of policy in the Strategic Land Use
21 Guidelines and in the District Land Use Guidelines?

22 MR. FREIDIN: It's our position that the
23 evidence of Mr. Crystal is consistent with those
24 statements and the comment goes to the native interests
25 and not limited solely to treaty and aboriginal rights.

1 THE CHAIRMAN: So is what you are saying
2 effectively that wherever you see such words in either
3 the Strategic Land Use Plans, the District Land Use
4 Plans, Table 32, if they were included, would be
5 subject to the extent which those treaty rights are
6 understood, a statement like that?

7 MR. FREIDIN: That is what I am
8 attempting to clarify, yes.

9 MR. HUNTER: Well, I don't think that
10 that position would be clearly acceptable to us, Mr.
11 Chairman, because we believe that, as you have already
12 heard, that it is understood what some of those treaty
13 rights are and that, therefore, those rights ought to
14 be clearly enunciated in the assessment document in
15 order to mitigate or enhance impacts in terms of forest
16 management activities.

17 THE CHAIRMAN: Mr. Hunter, the Board
18 isn't for a moment suggesting that you would agree with
19 the Ministry's position.

20 MR. HUNTER: I appreciate that.

21 THE CHAIRMAN: You may have a very
22 different position on what is or is not understood, but
23 I just wanted to clarify for the purposes of this
24 evidence and the Ministry's position on this evidence
25 what they at least mean by the inclusion of those

1 words.

2 MR. HUNTER: Thank you, Mr. Chairman. I
3 will refrain from any comment on the ambiguities that
4 Mr. Crystal and Mr. Freidin are volleying us with.

5 Q. Perhaps, Dr. Euler, and Mr. Clark, I
6 can once again draw you back to Table 32, the sixth
7 bullet - and I thank you Mr. Clark for clarifying that
8 for us.

9 Just in order that there is no
10 misunderstandings, that bullet:

11 "Where the buffer provision should not
12 provide adequate protection..."

13 Applies to species other than moose?

14 MR. CLARK: A. That is correct.

15 Q. Thank you. And, Mr. Clark, would
16 you -- you were looking at me quizzically as if you
17 were --

18 A. I was just waiting.

19 Q. And I would like both of you to
20 respond to this, perhaps Mr. Clark from a process point
21 of view, and Dr. Euler from a technical/scientific
22 point of view.

23 Is the mitigation that's provided under
24 that section, assuming - I'm not accepting Mr. Clark,
25 the perfect symmetry of your decision-making process -

1 but to what degree does that provision, in terms of its
2 ability to provide mitigation, rely upon native input
3 vis-a-vis we're talking now about the operation at a
4 site-specific level?

5 A. Well, I think -- I think it's much
6 the same issue that we were talking about when we
7 talked about archaeological sites.

8 Our process depends very heavily on the
9 voluntary provision of information concerning values
10 that are of importance to native people. Now -- so in
11 that context, if there are particular species of either
12 plants or animals that are important to them, we can
13 really only know if they tell us.

14 And so that in the process of timber
15 management planning, we have tried to design the
16 process so that it does provide those kinds of
17 opportunities, formal opportunities that allow for the
18 provision of this kind of information.

19 Q. Okay, fair enough.

20 A. And I guess, just in the latter part,
21 the other important part of it is in the designing of
22 prescriptions to protect those land uses or values of
23 concern, we have to rely once again on input concerning
24 what appropriate forms of protection would be, if
25 indeed protection is the issue.

1 Q. To try to close the loop -- sorry,
2 Dr. Euler, do you have any comments on that?

3 DR. EULER: A. No.

4 Q. In terms of closing the loop on that,
5 Mr. Clark, correct me if I am wrong, northeastern the
6 Strategic Land Use Plans and the District Land Use --
7 start with the Strategic Land Use Plans, essentially
8 establish allocation targets, the District Land Use
9 Guidelines establish those targets -- establish
10 targets, not those targets but targets, and they also
11 establish designated land use areas.

12 If I want to go back to the evidence
13 given by Mr. Monzon and Mr. Douglas, please bear with
14 me, in Panel 7 - I am fading - Volume 7.

15 Do you have Volume 7?

16 MR. CLARK: A. Yes, I do.

17 Q. And perhaps I would draw your
18 attention to page 1230 - and this is my
19 cross-examination of Mr. Monzon - and, firstly, do you
20 share the view that these guidelines are of some
21 significance in terms of land use planning and activity
22 in the district areas?

23 A. Yes, I do.

24 Q. What I am having a great deal of
25 difficulty in coming to grips with, I think we have

1 just seen this in relationship to some of the policy
2 concerns, is what is the relationship -- is there a
3 relationship over and above the issue of allocation
4 between the land use guidelines and the establishment
5 of the timber management plans?

6 A. Well, yes, there is.

7 Q. And could you please identify what
8 those factors would be?

9 A. I can really only talk from my own
10 experience and I will try to relate to you on that
11 basis.

12 When we were doing -- I want to think
13 about this for a minute just to organize my thoughts.
14 I think one of the principal areas where we used the
15 District Land Use Guidelines was most particularly once
16 we move beyond the objective statements that were in
17 the guidelines, was in the various land use area
18 designations that occurred within those plans because
19 they were specific geographic areas for which there
20 were a variety of land use intents and specific
21 guidelines were identified and particular uses were
22 deemed as either acceptable or not acceptable.

23 So that when you were putting together
24 background information for a timber management plan,
25 that is particularly useful material for getting a

1 sense of where we were trying to go in that particular
2 geographic area, whether it be one zone or a number of
3 zones.

4 In some cases it might identify tourism
5 lakes; in other areas it would identify other
6 recreational resources of significance and so on. So
7 that the area designations in those plans, as I say,
8 once you move beyond the specific objectives and
9 strategies what were identified in the plans, provided
10 useful information, background information in timber
11 management planning.

12 Q. So would you have any difficulties -
13 and I draw your attention, I ask you to turn to page
14 1247 and 1248 of Volume 7.

15 And I think, if I just read it you can
16 either agree or disagree.

17 "Q. So then the statement in the draft
18 document is not correct?"

19 Do you see the bottom --

20 A. Oh I see it, yes.

21 Q. I asked you -- this is Mr. Monzon:

22 "Up until 1985, were they of fundamental
23 importance, and I am stressing the word
24 fundamental as distinct from just
25 important.

1 MR. MONZON: A. I think regardless as to
2 whether -- I think I understand your
3 concern. Regardless of whether the word
4 fundamental appears in the 1987 document,
5 I would take the view that they are a
6 fundamental consideration, yes. They
7 were and are -- were and are.

8 Q. Thank you."

9 Would you agree with the views expressed
10 by Mr. Monzon in respect of those documents?

11 MR. CLARK: A. Yes. I would.

12 MR. HUNTER: Just one moment, Mr.
13 Chairman, if I might.

14 Q. Just one last I draw your attention
15 to the Geraldton Land Use Guideline.

16 MR. HUNTER: Mr. Chairman I am not sure
17 whether this has been entered as an exhibit or not. I
18 just have one copy of it.

19 THE CHAIRMAN: I don't believe it has.
20 Perhaps Mr. Freidin could confirm.

21 MR. FREIDIN: Well, Mr. Chairman, I'm
22 advised that that guideline is not a Ministry approved
23 guideline. There are no District Land Use Guidelines
24 for the three districts of Geraldton, Red Lake and
25 Sioux Lookout.

1 THE CHAIRMAN: So is it a forgery? What
2 is it?

3 MR. FREIDIN: I don't know.

4 MR. HUNTER: Could I...

5 THE CHAIRMAN: Is that still your
6 position, Mr. Freidin?

7 MR. HUNTER: I'm not sure I understand.
8 All right. No -- Mr. Chairman...

9 MR. MARTEL: Did it come in a brown
10 envelope?

11 MR. HUNTER: Q. Mr. Clark, I am finding
12 it very -- I overheard part of the conversation in
13 which, as Mr. Freidin said, there is no Geraldton
14 District Land Use Guideline. Well then, I don't know
15 what I'm holding.

16 MR. FREIDIN: Let's see it.

17 MR. HUNTER: (handed)

18 THE CHAIRMAN: At least from this
19 position and this distance the colour looks familiar.

20 MR. FREIDIN: Oh, it's the right colour.

21 MR. HUNTER: Well, Mr. Chairman, just so
22 there is -- I purchased it in her Majesty's bookstore.

23 THE CHAIRMAN: Perhaps it's a leaked
24 guideline.

25 MR. CASSIDY: I'm advised that you can't

1 judge a guideline by its cover.

2 THE CHAIRMAN: Whereabouts are you, Mr.
3 Hunter, in your examination?

4 MR. HUNTER: I'm almost finished.

5 THE CHAIRMAN: Oh, you are.

6 MR. HUNTER: Yes.

7 THE CHAIRMAN: So...

8 MR. FREIDIN: Mr. Chairman, all I can do
9 is just indicate that the Ministry's view is that, as I
10 have stated it, I can make some inquiries and see
11 whether I can add anything to the comments I have
12 already made.

13 THE CHAIRMAN: Well, why don't we handle
14 it in this way: While you ascertain perhaps whether or
15 not it is or is not a Ministry guideline, perhaps Mr.
16 Hunter could deal with it hypothetically as if it were.

17 MR. HUNTER: Q. Mr. Clark, are you
18 familiar--

19 MR. MARTEL: It doesn't exist.

20 MR. HUNTER: Q. --with this non-existent
21 guideline?

22 MR. CLARK: A. Well, no, I'm not. I
23 think the Chairman indicated correctly that they are
24 all the same colour and that may have created some
25 confusion in the warehouse, but...

1 Q. I see.

2 A. No, I'm not.

3 Q. You're not familiar with this
4 guideline.

5 A. No, I'm not.

6 Q. I see. Let me then draw your
7 attention to page -- I will just read it into the
8 record and then just simply ask you if you were aware
9 of this.

10 THE CHAIRMAN: Are we going to file this
11 at some point as an exhibit?

12 MR. HUNTER: Well, Mr. Chairman, I'm not
13 entirely sure that I want to go out and spend a hundred
14 dollars -- I'm not even sure -- what do these cost?

15 MR. McKIBBON: There may only be one of
16 them.

17 MR. HUNTER: I could try -- I'll try, but
18 I'm presuming if I don't -- I'm not sure if I get back
19 to the bookstore that there will be any left. I'm not
20 giving this up.

21 THE CHAIRMAN: I'm just thinking in terms
22 of the record, if you are going to be referring to a
23 line of questioning based on a mysterious document --

24 MR. HUNTER: I will enter this as an
25 exhibit.

1 THE CHAIRMAN: Okay.

2 MR. HUNTER: And I presume it's in your
3 safekeeping, and then I will attempt to get another
4 one.

5 THE CHAIRMAN: Very well. Let's enter it
6 as Exhibit 531. What do you want to call it?

7 MR. HUNTER: Geraldton Land Use
8 Guidelines.

9 THE CHAIRMAN: Unauthorized?

10 MR. FREIDIN: Just leave it at that. The
11 record will speak for what it really is.

12 THE CHAIRMAN: Okay.

13 MR. FREIDIN: As I have stated it, or as
14 I explain it later.

15 THE CHAIRMAN: Okay.

16 ---EXHIBIT NO. 531: Document entitled: Geraldton Land
17 Use Guidelines.

18 MR. HUNTER: Q. Page 63, Mr. Clark, it's
19 called Lake St. Joseph and Dusey CMUs, Area
20 Description.

21 THE CHAIRMAN: What is that last term,
22 can you spell that.

23 MR. HUNTER: Dusey, D-u-s-e-y, CMU's,
24 C-M-U's - and Mr. Cassidy just informed me it's a real
25 doozy - Area Description.

1 "There is one Indian reserve, the Fort
2 Hope Reserve in this area. This area
3 includes the Lake St. Joseph and a
4 portion of the Dusey Crown Management
5 Units. No commercial timber harvesting
6 extraction has occurred in this area to
7 date. The western portion of the Lake
8 St. Joseph CMU is included in the Reed
9 tract. The eastern portion is included
10 in an agreement with the Fort Hope Band
11 under which timber harvesting rights
12 would not be granted to any other party
13 without first considering the the Band."

14 Oh, Mr. Clark?

15 MR. CLARK: A. Just getting my bearings.

16 Q. So, firstly, in all seriousness, I
17 take it you are not familiar with the Geraldton
18 District Land Use Guideline?

19 A. No, I'm not.

20 Q. And, therefore, you are not familiar
21 with the provision that I just read to you?

22 A. No, that's correct.

23 MR. HUNTER: I have no questions, Mr.
24 Chairman.

25 THE CHAIRMAN: Your examination is

1 complete?

2 MR. HUNTER: Yes, sir.

3 THE CHAIRMAN: Thank you.

4 MR. HUNTER: Thank you, gentlemen.

5 THE CHAIRMAN: Very well, ladies and
6 gentlemen. We will adjourn for today until 9:00 a.m.
7 tomorrow and at that time, Mr. Freidin, you will be
8 ready to commence with your re-examination?

9 MR. FREIDIN: I should be, yes.

10 THE CHAIRMAN: Thank you.

11 ---Whereupon the hearing adjourned at 4:50 p.m.,
12 to be reconvened on Tuesday, May 2nd, 1989,
commencing 9:00 a.m.

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